

1907-017 Chancery Causes: Black Mountain Coal Land Co] vs. George W. Gish to
Lee Co.

Astberry, Asbury, Watts, Moore, Johnson, Hughes, Pennington,
Dulaney, Kilbourne, Emmert, Thompson, Douglas, Johnston, Orr,
Hyatt, Noel, Carter, Debusk, Maess, Waddell, Barnett, Doss, Wax,
Zion, Witt, Redwine, Stapleton, Duncan

CA-Contract Dispute
T-Property

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County:

Your orator, the Black Mountain Coal Land Company, Incorporated, a Virginia Corporation, respectfully represents unto your honor, that in pursuance to a contract made and dated the _____ day of _____, 1904, George W. Hughes by a deed dated on the 3rd day of August, 1905, conveyed to your orator a certain tract or parcel of land, lying and being in Lee County, Virginia, in the "Pocket" country on the North Fork of Powell's river, for and in consideration of the sum of \$2008.75 in hand paid by it to said Hughes, - a copy of which deed is herewith filed, marked "A", and prayed to be taken as part of this bill.

Your orator will further show unto your honor that a portion of the tract of land described in said exhibit "A" has on it necessary and very valuable timbers; that it is now informed, believes and charges ~~xxx~~ that within the last ten or fifteen days next preceding this date, one Gorge W. Gish has hired and contracted with one Robert Asberry, without the knowledge ^{or consent} of your orator, to cut, ^{and} fell, make into saw log lengths and take from off said tract of land mentioned in said exhibit "A" some of the most valuable timbers standing and being thereon; and that the said Asberry has in pursuance to his contract with the said Gish already cut down and sawed up into saw log lengths a considerable portion of the timbers standing and being on said land, and the said Gish intends to have ^{and felling} him continue cutting, ^{or a material part of} the same until all the valuable timbers are cut, felled and sawed into saw log lengths ~~xxx~~ that may be found thereon; and that when said timbers are so cut and felled and sawed into ^{log} saw lengths, the said Gish intends to move ^{the same} from off the said land.

Your orator will further show unto your orator that ^{it} is informed, charges and beleives that said Gish, claims to be the assignee of

Watts of a contract from said Hughes for certain ^{but first what kind and quantity your orator does not know} timbers standing and being on said land, which contract he claims

to have been made with said Hughes BEFORE ^{he} conveyed said land to your orator; and ⁱⁿ pursuance to such ~~2~~ contract he claims the right to cut said timbers from said land. But your orator will ~~will~~ alledge and show unto your honor that if said Watts had any contract with said Hughes for any or all of the timbers on said land, it had no information or notice of such a contract at any time before it paid its money to and took said Hughes' said deed, either actual or constructive; if said Watts' had purchased from said Hughes any of the timbers on said land, he did not have his contract recorded. And it will be seen from an inspection of said deed to your orator, there are no reservations of any timbers or other things, except a strip of land running from the top of Stone mountain across the North Fork of Powell's river, and being the same land condemned by the Louisville and Nashville Railroad Company, a description of which is of record in the clerk's office for Lee County, Virginia, in Deed Book, No. 41, page 85; but on the contrary ~~xx~~ ^{the} said Hughes made to it a deed with covenants that he was seised in fee simple of the same; that the said land was free from all incumbrances; that your orator, its successors and assigns should have quiet and peaceable possession of said land, and that he would warrant generally the title thereto. And your orator relying upon these covenants of warranty and having no knowledge, notice, either actual or constructive, or information of the said claim of said Gish, or his assignor, it paid out its money to said Hughes and took from him ^{a deed to} said land.

And your orator will further show unto your honor and alleges that said Gish and Asberry are now without ^{any} property, and a judgment against them or either of them on account of the said wrongful cutting of the said timbers off of said land, could not be collected by any process of law.

And your orator will further show that the said land aforesaid is valuable principally for the supposed coals that are on and under it, and that in order to mine the same profitable, it is necessary

Your orator will further show unto your honor, that it is informed already and charges that the said George W. Gish has ^{already} had cut ~~standing tim-~~
~~bers on said land~~ ^{the} a considerable quantity of timbers from said land, sufficient to make 103 logs, and he intends to move the same from off of said land; and that the cutting of said timbers has greatly damaged your orator, no less than \$250.00.

The objects therefore of this bill is to have the said George W. Gish and Robert Asberry, and all other persons ~~un~~injoined and prohibited from cutting and removing any more of said timbers, and from moving what they have already cut from said land described in said exhibit "A"; and to recover from said Gish and Asberry said sum of \$250.00 for the damages done to its said land.

The premises considered, and your orator being remediless, save in a court of equity, it prays that your honor take cognizance of

that this its cause of complaint; that said George W. Gish and Robert Asberry be made parties defendants to this bill of complaint; that

they, and each of them and all other persons be enjoined and prohibited from cutting any more of said timbers and from removing the said

103 logs or any part of the same; that it be ~~awarded~~, awarded damages *that in the answer of said Fishbein required to file the cost* in the sum of \$250.00 on account of the cutting of said 103 logs; and

that all other, further and general relief be awarded to it, that the nature of its cause may require to comport with equity. And it will ever pray, etc.

Black Mountain Coal Land Company, Incorporated

Black Mountain Coal Land Company, Incop.

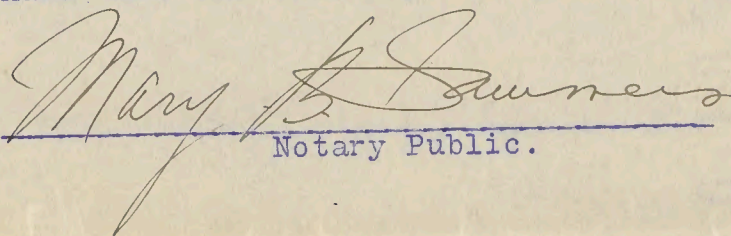
By

State of Virginia,
City of Bristol, to-wit:

I, Mary B. Summers, a Notary Public in and for the City of Bristol, State aforesaid, do hereby certify that N. D. Bachman, Jr., personally appeared before me in my City aforesaid, and made oath that the allegations and averments in the foregoing bill are true in so far as made upon his own knowledge and information, and in-so-far as made upon the information of others, he believes them to be true.

My term of office expires July 3rd, 1907.

Given under my hand this the 28th day of September,
1906.


Notary Public.

Black Mt. Coal Land Co

vs. } Bill

Geo. H. Gish et al

1906 1st Nov. Rules
Bill filed, Spa. ex-
cuted & D. N.

" 2 Nov. Rules
D. N. confirmed
& cause set for
hearing.

Plff costs:
Clerk 7.69
Shff. 2.00
Notary 4.50

Defte costs: \$14.19
recd from
Gish. \$2.29
Shff. 1.90
att. 15.00
total 3.50 \$29.19

To the Hon.H.A.W.Skeen, Judge of the Circuit Court for Lee
County/, Virginia:

The answer of G.W.Gish to a bill of complaint filed against him
in said court by the Black mountain Coal Land Company:

For answer to said bill of complaint or some much thereof as he
is advised it is material he should answer, respondent says:

He supposes it is true that the complainant purchased the tract of
land mentioned in Exhibit "A" filed with said bill of complaint, at
the price therein mentioned; and that said tract of land has thereon
some valuable timbers.

It is also true respondent has been cutting and has had cut some
of said timber. But respondent says it is his timber and not the tim-
ber of said complainant. That one J.G.Watts, long before the complain-
ant purchased said land, purchased one hundred thousand feet of the
timber standing on said tract of land from the said Geo.W.Hughs, for
a valuable consideration, and which was sold by said watts to your
respondent.

Respondent says that that both W.B.Emmert and E.W.Pennington
agents of the complainant at the time of the alleged purchase of said
land, and who negotiated the trade for said land both knew at the
time complainant took a deed for said land that said Watts had pur-
chased said timber.

Respondent says that he at no time, has taken or intended to take
from said land, any more or other timber than what he purchased and
which purchase complainants had notice, at the time they purchased
said land.

And now having fully answered all the allegations of said bill
that respondent is advised it is material for him to answer, and
and denying all other allegations therein, not herein specifically
admitted or denied, respondent prays to be hence dismissed with his
reasonable costs herein expended.

Charles C. Sales, Atty.

Blk Mt Coal Land

vs { Duely
G. W. Fish et al

Answer of G. W.
Fish

Filed Dec. 11, 1906

N. C. J. Ewing,
clerk -

BLACK MOUNTAIN COAL LAND COMPANY,

VS.

G. W. GISH, Et. Al.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County:

The exception of the plaintiff to the answer of the defendant *Geo. W. Gish* filed in this cause on the 11th day of December, 1903 and for exceptions this said answer said plaintiff says;

(1). That said answer is insufficient in that it is not full, complete, and responsive to ~~the~~ several allegations of the said plaintiff's bill. He fails to answer whether the said defendants are insolvent; He fails to file with his answer the purported contract between G. W. Hughes, and J. G. Watts, or to make any explanation ~~or~~ to sign any reason why he did not do so in his answer. The plaintiff in this case specifically prayed that said defendants be required to file with their answer the contract of said Watts to the said Hughes. *which is not done.* All of which is respectfully submitted.

BLACK MOUNTAIN COAL LAND COMPANY.

BY

Pearson Law Bros ATTORNEY FOR PLAINTIFF'S.

To The Hon.H.A.W.Skeen,Judge of the Circuit Court for
for Lee County,Virginia:

The seperate answer of G.W.Gish to a bill in chancery
exhibited against him and others in said court by the Black
Mountain Coal Land Company, Incorporated.

Respondant for answer to the said bill or to so much
thereof as he is advised it is material for him to answer answer-
ing says:

That on the 7th,day of January,1902,the said George W.
Hughes,who was at that time the owner of the tract of land in
the Pockett Country on the North Fork of Powells River mentioned
by the complainant in its bill and fully described in exhibit "A"
filed therewith,by his contract in writing bargained and sold unto
one J.G.Watts one hundred thousand feet of hemlock timber stand-
ing on the said land on the north side of Stone mouuntain,which said
written contract is in the words and figures following,to-wit:

"This agreement made and entered into this 7 day of Jan.1902
by and between G.W.Hughes party of the one part and J.G.Watts of
the other part witnesseth:

~~the~~ That the said G.W.Hughes has bargained and sold unto the
said J.G.Watts 100000 feet of hemlock timber for the sum of
fifty dollars,twenty five dollars of which is hand paid the re-
ceipt of which is hereby acknowledged,the residue (\$25.00) to be
paid before said timber or lumber manufactured therefrom,,is re-
moved from the lands of the said G.W.Hughes.

The timber herein sold is situated and standing on
the lands of the said G.W.Hughes on the waters of the North Fork
of Powells River,and adjoining the lands of Tom Johnston.

The said timber is to be measured by the "lumbermans
Favorite" log rule,and all the merchantable hemlock timber growing
on said place is to be taken,until the said 100000 feet has been
cut and secured.

The said Hughes agrees further to furnish a mill site for
sawing and ricking the lumber from said timber,near the river
on said land,free of charge.

Witness the following signatures the day and year first
above written."

(Signed) G.W.Hughes.
Witness H.F.Hughes.

Said original contract is in the hands of respondents
counsel and will be produced as evidence in this cause.

~~Neither of said contracts are recorded.~~

The residue of the purchase price of the said timber
mentioned in the said contract was afterwards paid by the said

Watts to the said Hughes before the sale by said Hughes of the said land to the said complainant.

Afterwards to-wit: on the 25th, day of August, 1904, the said J.G. Watts by his contract in writing conveyed the said timber to this respondent, which said contract is in the words and figures, to-wit:

"This agreement made and entered into by and between J.G. Watts party of the first part and G.W. Gish, party of the second part, WITNESSETH:

That for and in consideration of the sum of \$100. to be paid within 90 days from the date hereof, as evidenced by note with security, the party of the first part does hereby bargain sell and convey to the party of the second part, a certain boundary of timber situated on the north side of Stone Mountain being a part of the timber conveyed by Geo. W. Hughes to J.G. Watts on the lands owned by George W. Hughes, on the north Fork of Powells River, about four miles North of Pennington Gap, Va. Said boundary of timber is the entire remainder of 100000 feet more or less, and consists exclusively of hemlock.

Witness our hands and seals. Dated at Pennington Gap, Va. August 25th. 1904.

(Signed) J.G. Watts
Per J. Watts
George W. Gish.

Said original contract is in the hands of respondents counsel and will be produced as evidence in this cause.

Neither of said contracts are recorded.

Your respondent believes and charges that at the date of the sale by the said Hughes of the said tract of land to the said complainant the said Hughes informed the said complainant, its agents and attorneys of the said contract between himself and the said Watts for the sale of the said timber and at the date of its purchase of the said tract of land the said complainant its agents and attorneys had full knowledge of the fact that the said Hughes had sold the said timber to the said Watts.

Respondant denies that he is insolvent.

Respondant further says that his co-defendant Robert Asberry has and claims no interest in said timber but was only an employe of said respondent in cutting the said timber. Respondant is not informed as to whether the said Asberry is insolvent but is advised that it is immaterial whether it be so or not under the fact above alleged that he claims no interest in said timber but is

merely working under this respondent.

Respondant prays therefore that the complainants bill be dismissed; that the injunction heretofore ordered in this suit be dissolved and that he be quieted in his right to cut and remove the said timber from the said land.

And now having fully answered respondent prays to be hence dismissed with his costs, etc.

Charles C. Bales Attorney.

Blk. Mt. Coal Land Co.

vs { In Chancery

G. W. Gish et al.

Answer of G. W. Gish

Filed in open court +
by leave thereof on Feb.
8th 1904.

N. C. T. Ewing.

Blk.

Attorney.

CIRCUIT COURT FOR LEE COUNTY

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston et al.

The sepearate demurrer and answer of the Black Mountain Coal Land Company, Incorporated, to a bill in chancery exhibited against it and others in this Court by Elba Johnston and others.

For Demurrer to the said bill this defendant says that the same is not sufficient in law.

Not waiving the said demurrer, should any answer be required, this Respondent answers as follows:

It is true that the complainants are, as alleged in the said bill, two of the heirs at law of Elijah Pruitt, deceased; and that the said Elijah Pruitt departed this life intestate on the _____ day of _____, 1906; but it is not true that the said Elijah Pruitt died seized and possessed of the tract of land described in the bill. Upon the contrary the said tract of land was owned in fee simple by this Respondent at the time of the said Pruitt's death, and is so owned at this time.

In this connection, your respondent will state to the Court in detail the manner in which and the circumstances under which the said Elijah Pruitt parted with his title to the said tract of land, and the successive conveyances under which the said title passed to this respondent: On the 20th day of December, 1902, the said Elijah Pruitt entered into a contract in writing with J. H. Caldwell, B. L. Dulaney and W. B. Emmert, under the terms of which he agreed to sell and convey with covenants of general warranty to the parties last aforesaid all the coal, oil, minerals, gasses, stone, and certain timber, together with certain rights and privileges, all of which are more particularly described in the said contract at the price of five dollars per acre. Said contract was duly executed and acknowledged and recorded in the Clerk's Office of this Court in Deed-Book No. 29, page 456, etc., and a duly certified copy thereof is filed herewith, marked "Exhibit A", and a same is hereby made a part of this answer as fully as if it were set forth herein at length and in full.

The said Pruitt subsequently became dissatisfied with the said contract and failed to comply with the terms thereof, whereupon, on the _____ day of _____, 1903, the said John H. Caldwell, B. L. Dulaney

and W. B. Emmert instituted a suit in equity in this court for the purpose of enforcing a specific execution of the said contract. The said Pruitt employed counsel and was proceeding to defend the said suit, when compromise negotiations were opened up between the parties thereto, which resulted in the execution of the deed from the said Elijah Pruitt to the said Cladwell, Dulaney and Emmert, and particularly referred to in the bill in this present cause, and a duly certified copy of which deed is herewith filed as a part hereof, marked "Exhibit B". Respondent here refers to and makes a part of this answer all of the original papers and orders in the aforesaid chancery cause of J. H. Caldwell and others against Elijah Pruitt, which are now on file and of record in the Clerk's Office of this court, and asks that the same be considered herein in any and all hearings of this cause. Special attention is called to the final order in said case entered on the 5th day of November, 1903.

Your respondent avers that the compromise negotiations aforesaid, which led up to the execution of the deed from the said Pruitt to the said Caldwell, Dulaney and Emmert were fully^{and} maturely considered and understood by the said Pruitt; that he acted deliberately and intelligently and without the slightest influence or coercion from any source in the execution of the said

deed.

Your respondent denies that the said Elijah Pruitt was at the time of the said conveyance, or that he had been for some time prior there to, or at all, wholly incompetent and incapable of making a conveyance or transacting business. It is true that the said Pruitt was a man of advanced age, but he was in the full possession of his faculties and fully capable of understanding the nature and importance of his business.

It is not true that at and before the time of the said conveyance any undue influence, intimidation or threats were used to procure the said conveyance, or that the said Pruitt was put under the influence of intoxicating drinks for the purpose of inducing him to part with his land, or that at the time of the said conveyance he was not of sound mind and understanding, but, on the contrary, respondent repeats that he was perfectly capable of making and ~~deed~~ did make a valid conveyance. It is a fact, and proper to be considered in this connection that at the time of the execution and acknowledgment of the said conveyance/^{neither} the said Caldwell, Dulaney or Emmert, nor any representative of theirs, was present, but the deed was executed by the said Pruitt after a full conference with his counsel, Judge C. T. Duncan, who took the deed to him, and the same was acknowledged

before L. T. Hyatt, a Commissioner in chancery, at the home of the said Pruitt, in Lee County, remote from any of the parties having an adverse interest to him.

Respondent denies that the consideration recited in the said deed, which was the true consideration therefor, agreed upon between the parties, was inadequate; but upon the contrary avers that the price fixed in the said deed was as much as the said Caldwell, Dulaney and Emmert had paid to any of the parties for lands purchased by them in Lee County up to that time, and was more than they had paid for the greater part of the lands which they had purchased therein; and Respondents aver that the said Caldwell, Dulaney and Emmert had made a large number of purchases in that country,- some of the other lands bought by them being immediately adjacent to the said Pruitt lands, and a great deal thereof lying immediately in the same vicinity.

Respondent here again denies that the said deed was procured by ~~vixt~~ fraud and undue influence.

It is true, as alleged in the bill, that respondent is now claiming the said land under and by virtue of the said deed from the said Pruitt to the said Cladwell, Dulaney and Emmert, and subsequent conveyances, which are as follows: On the 30th day of July, 1904, the said Cladwell, Dulaney and Emmert conveyed for a

valuable consideration the said land to the Black Mountain Coal & Coke Company, which deed was duly recorded in the office of the Clerk of this Court, in Deed-Book No. 42, page 154, and a duly certified copy thereof is herewith filed as a part hereof, marked "Exhibit C"; on the 26th day of October, 1904, by deed duly recorded in the office aforesaid, in Deed-Book No. 42, page 82, the said last mentioned company conveyed the same to the Black Mountain Coal Land Company, Incorporated, the respondent herein, for a valuable consideration, and a duly certified extract copy of the said deed is filed herewith as a part hereof, marked "Exhibit D"; and, it is further true that, claiming under the said title papers, this respondent, on the ____ day of _____, 1906, instituted an action of ejectment against the heirs at law of the said Elijah Pruitt, which action of ejectment not being regularly matured for the December Term, 1906, of this court, was remanded to rules, and was regularly upon the docket of this court, and stood for trial at the February Term, 1907, but was continued upon the motion of the plaintiffs in this case, who were also the defendants in the said ejectment suit. The attention of this court is called to the fact that the complainants in this present case have been inexcusably slow in the presentation of the application for injunction which is sought in the bill

to which this paper is an answer.

It is true that the said Nathan Pruitt, Robert Pruitt, Hugh Pruitt, Martha Johnston, Margaret Eldridge, Matilda Bailey and Nancy Eldridge have, since the institution of the said action of ejectment relinquished all claim to the said land and executed an acquittance and release, which acquittance and release is filed herewith as a part hereof, respondent reserving the right to substitute therefor a certified copy of the same as soon as it shall have been recorded, such certified copy to be marked "Exhibit E". No additional consideration whatever was paid to the parties who executed the said acquittance and release, but they simply received their respective shares of the unpaid purchase money, for which a vendor's lien was retained in the said deed from the said Pruitt to said Caldwell, Dulaney and Emmert. The said Caldwell, Dulaney and Emmert have always been ready willing and able, and are so now, to pay to the complainants, or to the administrator of the said Pruitt, for them, their respective shares of the said unpaid purchase money. As a matter of fact, the said parties have desired to make this payment long ago to the said administrator, but, owing to the attitude of the said complainants the said administrator has not desired to receive the same.

Respondent denies that the complainants have any

defense equitable or toherwise to the said action of ejectment; and it is true that the said Black Mountain Coal Land Company, Incorporated, unless restrained by a Court of Equity from doing so will proceed at once to take a judgment in said action of ejectment; but Respondent avers that it has the right, both at law and in equity and conscience, to the said judgment; and denies that the obtaining thereof will work any injury whatever to the complainants in this present suit.

Respondent further avers that whether or not the said land is susceptible of any partition in kind and quality is wholly immat erial question in this case, the said complainants having no rights or interest therein.

Respondent says that the price of sixteen dollars per acre was certainly as much as the fair market value of the said land at the time of the said conveyance, and the statement in the complainants bill that the said land is worth fivehundred dollars per acre, whether applied to the time of the conveyance or to any other time is simply preposterous. As a matter of fact the said Pruitt had in August, 1901, executed a contract to C. and C. B. Slemp and Vincent Boreing, authorizing them to sell the said land at the price of fifteen dollars per acre. The said Pruitt at the time of the execution by him of the aforesaid contract of December the 20th, 1902, was not satisfied in his own mind as to what

rights the said C. and C. B. Slomp and Vincent Boreing might have against him under the said contract, and, therefore, required the parties to whom he made the said contract to protect him against the provisions of the said contract with Slomp and others, as will more fully appear from the said contract of December 20th, 1902.

It is true that Respondent, or parties acting under it, have taken some of the timber from the said land, but as the land belongs to respondent, the complainants have no interest in what becomes of the said timber, or its proceeds.

It is not true that the said Cladwell, Dulaney and Emmert purchased the said land and obtained the said conveyance from the said Pruitt for the benefit of this respondent. At the time of the said conveyance this respondent was not in existence. The said parties obtained the said deed for their own benefit, to do with the said land whatever they might desire to do with it, and did subsequently dispose of the same to the Black Mountain Coal & Coke Company, taking in exchange therefor other lands in Lee County.

Respondent having now answered as fully as it is advised any answer is required of it, and here expressly denying each and every allegation of the said bill which has not been hereinbefore specifically denied

or admitted, prays to be hence dismissed with its costs in this behalf expended.

BLACK MOUNTAIN COAL LAND COMPANY, INCORPORATED

Bullitt & Kelley

Attorneys for Respondent.

STATE OF VIRGINIA, County of Lee, to-wit:

I, H. C. T. Ewing, Clerk of the Circuit Court of Lee County, Virginia, do hereby certify that N. D. Bachman, Jr., this day personally appeared before me, in my office, and made oath that he is secretary treasurer and General Manager of the Black Mountain Coal Land Company, Incorporated, the defendant in the foregoing answer, and that the statements contained in the said answer, so far as made of his own knowledge are true, and so far as made upon information derived from others, he believes them to be true. Given under my hand this 22 day of May, 1907.

H. C. T. Ewing

Clerk of the Circuit Court for
Lee County, Virginia.

Filed May 24, 1907

N.C.S. Ewing,
Clerk.

Black Mountain Coal Land Co. Compt
vs & In Chancery
G. W. Gish & Robert Seely Defts.

This cause came on this
day to be heard upon the bill
of the Complainant, the answer
of Geo. W. Gish, the deposition
of witnesses both for Com-
plainant and defendant
and was argued by counsel.

On consideration of all
which and for reasons
appearing to the Court it
is adjudged, ordered
and decreed that the
injunction heretofore
awarded against said
defendants in this
cause be and the same
is hereby is hereby vacated,
annulled and dissolved;
and this cause is dismissed;
~~at the cost of the plaintiff~~
and that the defendant, G. W. Gish, recover
of the plaintiff, The Black Mountain Coal
Land Co., a corporation, the costs by him
expended about his defense of this suit,
for which execution may issue.

Black Mt. Coal Land Co

v/s Deane
final

Mr. H. Gish et al

Entered in Vol 8
\$8, page 278.

Enter this
May 24th 1907
H. A. W. Stone
Judge

Black Mountain Coal Land Co., Plff.

vs. { In Chancery.

Geo. W. Gish et al.

Defts

On motion of the defendant, Geo. W. Gish, by his counsel, leave is granted him to file his separate answer to the complainant's bill, and the same is accordingly filed; and the complainant replied generally to said answer. Thereupon, on motion of the said Geo. W. Gish, by his counsel, it is ordered that this cause be continued.

Black Mt. Coal Land Co.

vs { Bell
Geo. W. Gish et al.

Decree filing answer
& continuance.

Entered in C.O.B.
#8, page 251-

Enter this decree
Feb. 18th 1904.
H. A. W. Simon

Black Mountain Coal Land Company-----Plaintiff.

Vs.

G. W. Gish and others-----DEFENDANT.

On the calling of this cause the defendant G. W. Gish moved the court to be allowed to file ^{his} a separate answer to the bill of said complainant herein, and to ~~the filing of~~ which answer the said plaintiff ^{be} by its counsel excepting ~~the~~ cause, the said Gish in his answer failed to answer whether he and his co-defendant were insolvent and failed to file with his answer the alleged contract between George W. Hughes and J. G. Watts and was argued by counsel:

On consideration of all which and for reason appearing to the court the exceptions of said ^{answer} complainants to said answer is sustained and the ^{answer} filed by said defendant Gish is stricken out. But on motion of the said Gish by his counsel leave is hereby granted him to file ^{if he so desires} his further answer in this case ^{on} or before the second January Rules 1907, which answer shall specifically state whether the said Gish and Asbury are insolvent and shall also contain said contract as an exhibit or a sufficient ^{reason} reason why the same is not filed with his answer. And this cause is continued.

his answer. And this cause is continued.

as an exhibit or a sufficient reason why the same is not filed with Gish and Vashuta are insolvent and shall also contain said contract dated 1908 which answer shall specifically state whether the said

his further answer in this case on or before the second January

of the said Gish his counsel leave is hereby granted him to file

and the filed by said defendant Gish is stricken out. But no motion

to set the expiration of said complaint to said answer is sustained

and the defendant Gish is ordered to appear and answer the said

complaint on or before the second January 1909 and to answer the

same in his answer whether he and his co-defendant were in-

debtor or creditor of the said Gish and whether the said Gish in his

answer has stated the reasons why he and his co-defendant were in-

debtor or creditor of the said Gish and whether the said Gish in his

answer has stated the reasons why he and his co-defendant were in-

debtor or creditor of the said Gish and whether the said Gish in his

answer has stated the reasons why he and his co-defendant were in-

debtor or creditor of the said Gish and whether the said Gish in his

answer has stated the reasons why he and his co-defendant were in-

Black Mt. Coal Land Co.

Vs. Decree.

G. W. Gish et als

Entered in C.R. #8, page 240

Enter this, Dec 17, 1908

H. C. Wilson

Judge

BIG STONE GAP, VA.,

Black Mountain Coal Land Inc. Compt.

vs.

George W. Gish et al. Defdts.

On the allegations of the bill of The Com-
plainant duly sworn to and which is treated
as an affidavit, it is adjudged, ordered and de-
creed That George W. Gish, Robert Asbury and all
other persons, are hereby enjoined and prohibited
from cutting and removing from the premises
mentioned in Exhibit "A" of said complainant's
bill any timber situated standing or being on
the lands in said Exhibit mentioned, and said
Gish and Asbury and all other persons are also en-
joined and prohibited from removing from said
lands any of the timber ^{so long} which they or either of them
have already cut from said lands. But This order
is not to be effective until the said complainant shall
give bond before the clerk of the Circuit Court for
Lee County, in the penal sum of \$500.00

conditioned to pay all damages by reason of
This injunction and to perform the future
order of the circuit court for Lee county in
This case.

This Sept. 28, 1906.

H. A. W. SIKES judge
of Lee County Circuit
Court

To J. C. J. Ewing
clerk

Blank Mt Coal
Land Co

of Order

G. W. Lish + Co

Entered in C. O. B.

No. 8, page 222

To Black Mountain Coal Land Company,

You will please take notice that on Friday the 19th, day of April, 1907, at the office of J.C. Noel in the town of Pennington Gap, Lee County, Virginia, I shall take the depositions of M.R. Gilley and others between the hours of 8 A.M. and 5 P.M. to be read as evidence in my behalf in the suit in equity depending in the Circuit court of Lee County, Virginia, wherein you are plaintiff and I and others are defendants. If from any cause said depositions be not begun on that day, or if begun be not completed, the same will be continued from time to time and from place to place until completed.

This March 21st, 1907.

G.W. Gish.

By Counsel.

Charles E. Ballo

Black Mt. Coal Land Co.
vs. $\frac{3}{2}$ notice to
take depositions
G.W. Gish

Executed this the 22 10th, day
of April, by delivering a true
copy of the within notice to
N.D. Baufman, Sec'y & Treas., of
Black
said ~~company~~ Mountain Coal Land
Company.

J. T. Hughes

Deputy for P.M. Ball, S.L.C.

of W.B. Gilley and others between the hours of 9 A.M. and 5 P.M.
Henningston Gap, Lee County, Virginia, I shall take the depositions
1907, day of April, 1907, at the office of J.C. Noel in the town of
You will please take notice that on Friday the
to Black Mountain Coal Land Company.

Commonwealth of Virginia,

To the Sheriff of Lee County, Greeting:

I hereby command you to summon George W. Hughes, M.R. Gilley, J.C. Noel, John Watts and A. Johnson to appear before me at the law office of J.C. Noel in the town of Pennington Gap, Lee County, Virginia, on Friday April ^{19th} ~~5th~~, 1907, at 9 O'clock A.M. to testify and give evidence on behalf of the defendant G.W. Gish in a certain suit in chancery pending in the Circuit Court for Lee County, Virginia, wherein The Black Mountain Coal Land Company, Incorporated, is plaintiff and the said G.W. Gish and Robert Asberry are defendants. And have then and there this ~~xxx~~ summons. *W & Thompson & Douglas*

Given under my hand this the 21 day of March,

1907.

W. H. Hopkins
Commissioner in Chancery for Circuit
Court for Lee County.

BLACK MOUNTAIN COAL LAND CO.,

Vs.

G. W. GISH.

Executed by
summon the
within witness
this April 18, 1907
J. T. Hughes & Co
for J. M. Ball
D. L. C.

WITNESSES

1 This Agreement made and entered into
2 this 7 day of Jan. 1902 by and between
3 G. W. Hughes party of the one part and
4 J. G. Watts of the other part witnesseth:

5 That the said G. W. Hughes has bargained
6 and sold unto the said J. G. Watts 10000 feet
7 of hemlock timber for the sum of fifty
8 dollars, twenty five dollars of which is
9 in hand paid the receipt of which is
10 hereby acknowledged, the residue (\$25.00)
11 to be paid before said timber or lumber
12 manufactured therefrom, is removed from
13 the lands of the said G. W. Hughes.

14 The timber herein sold is situated and
15 standing on the lands of the said G. W.
16 Hughes on the waters of the north Fork of
17 Powell's River, and adjoining the lands
18 of Tom Johnston.

19 The said timber is to be measured by
20 the "Lumberman's Favorite" log rule, and all
21 the merchantable hemlock timber growing
22 on said place is to be taken, until the
23 said 10000 feet has been cut, and secured.

24 The said Hughes agrees further to
25 furnish a mill site for sawing and
26 ricking the lumber from said timber,
27 near the river on said land, free of charge.

28 Witness the following signatures
29 the day and year first above written

30 G. W. Hughes
31 J. G. Watts
32 Witness

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By W. Hughes
with contract -
J. H. Watts

Filed as Exhibit No.
1 with the deposition
of G. W. Hughes on
April 19th 1904 in
case of Elk Mt Coal
Land Co vs. G. W. Gish et al

Pennington Gap Bank, Virginia.

\$ 100

Ninety
J. G. Watts
One

Hundred

Dollars

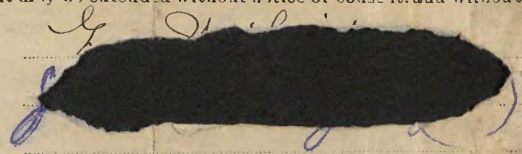
Pennington Gap, Va., Aug 25th 1904
days after date We promise to pay to the order of

Negotiable and payable without offset at Pennington Gap Bank, of Pennington Gap, Va., for value received and we hereby waive the benefit of our homestead and all other exemptions of law as to the debt evidenced by this note.

The undersigned principals and endorsers, sureties and guarantors hereby severally waive presentment for payment, demand, protest and notice of protest or non-payment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or consent, and without affecting their liability.

Given under our hands on date above written

Due November 25th 1904



Pay to the Order of
James Moore

J G Watts
per JN

Credited March 24th 1905

\$41.75

We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, or any renewal thereof, and acknowledge that we sign with a full understanding of this notice.

Filed April 19, 1907 as Exhibit
"3" with deposition of G. W. Gish
in case of "Bethel Coal Land Co
vs G. W. Gish."

5175-
500
675-

29

692

10000
4175-
\$5825-
5675-
150



This agreement made and entered into by and between J. G. Watts, ~~of~~
party of the first part and G. W. Gish, party of the second part,
WITNESSETH:

That for and in consideration of the sum of \$100.
to be paid within 90 days from the date hereof, as evidenced by
note with security, the party of the first part does hereby bargain
sell and convey to the party of the second part, a certain boundary
of timber situated on the North side of Stone Mountain, ^{being a part of the timber conveyed by Geo. W. Hughes to J. G. Watts,} on the lands
owned by Geo. W. Hughes, on the North Fork of Powels River, about
four miles North of Pennington Gap, Va. Said boundary of timber is
the entire remainder of 100,000 feet more or less, and consists
exclusively of Hemlock.

Witness our hands and seals. Dated at Pennington Gap, Va.
August 25th. 1904.

J. G. Watts
per J. Watts
Geo. W. Gish

Filed Apr 19/1907 as
Exhibit "2" with dep-
ositions of G. W. Gish
in case of Blk Mt. Coal
Land Co vs. G. W. Gish et al
aw

The depositions of George W. Hughes, et alius

taken before me, W.K. Hopkins, a Commissioner in Chancery for the Circuit Court of Lee County, Virginia, at the office of J.C. Noel in the town of Pennington Gap, Virginia, on the 19th, day of April, ~~2007~~ 1907, between the hours of 8 A.M. and 5 P.M., pursuant to notice hereto annexed to be read as evidence on behalf of defendant G.W. Gish in a certain suit in chancery pending in Lee Circuit Court, in which the Black Mountain Coal Land Company is plaintiff and the said G.W. Gish and another are defendants.

Present L.T. Hyatt and C.C. Bales, attorneys for G.W. Gish and E.W. Pennington, attorney for Black Mountain Coal Land Company.

The witness George W. Hughes, being first duly sworn deposes and says:

Q.1. State your age, residence and occupation?

A. I am 70 years of age, Residence Pockett, Lee County, Virginia, My occupation is farming.

Q.2. I now hand you a paper purporting to be a contract between you and J.G. Watts, whereby it appears that you sold to said Watts 100000 feet of hemlock timber, etc., and will ask you to state if this paper was signed by you?

A. The amount of money is all right and I got it and the 100000 feet is all right and I see nothing wrong with the contract.

Q.3. Then you did sell to J.G. Watts by this contract 100000 feet of hemlock timber?

~~xxxxxx~~ The foregoing question and answer thereto is ^{any} ~~the~~ objected to because the contract itself is best evidence of what was sold.

E. W. Pennington for Plaintiff

A. Yes sir.

Q4. I notice said contract states that \$25.00 was paid down and the remainder of \$25.00 was to be paid afterwards. Was that remaining \$25.00 ever paid to you and if so state when as near as you can?

A. I think the remaing \$25.00 was paid the same day the contract

was drawn up. I don't remember now that that was the time but I do know it has been paid.

Q.5. What I want to get at is, was this remaining \$25.00 paid to you before you sold the farm on which this timber is situated, to the Black Mountain Coal Land Company?

A. Yes sir. It was paid before the road went up there. I mean railroad.

Q.6. I will ask you to state whether or not you sold this land that ~~where~~ the timber was situated on to the Black Mountain Coal Land Company?

A. Yes sir.

Q.7. With whom did you make the trade for the sale of said land to said company?

A. Me and Judge Orr and Mr. Noel and Judge Pennington and Mr. Emmert. I got Judge Orr and Mr. Noel to help me in the matter.

Q.8. Did you understand Judge Pennington and Mr. Emmert to be the agents of the Black Mountain Coal Land Company, representing them in that trade?

The foregoing question and any answer thereto is objected to because the matter of agency is a question of fact and in order to establish such agency must be proven in some other way than the understanding of witnesses.

A. Yes sir.

Q.9. State whether or not, during the pendency of said trade you notified the said Pennington and Emmert or either of them of the fact that you had previously sold the timber on said lands to said J.G. Watts?

A. Yes I had mentioned to Mr. Pennington a time or two before the trade was closed about the matter and he said hold ^{on} we will fix that or something to that effect. ~~Maxx~~ I also talked about it to Mr. Emmert ~~xxxxxxx~~ several times. Mr. Emmert and me talked about it several times and he told me he couldn't pay me but \$5.00 per acre for the land on the mountain on account of the timber being sold.

Q.10. I will ask you to file said contract with your deposition as a part thereof, marked as exhibit No.1?

A. I file the same marked as requested.

X Examination.

Q-1 State whether you signed exhibit one filed with your deposition, or whether some one signed it for you.

A-I Didn't do it myself, but some one did it for me. I ordered it done.

Q-2 Did not you and your wife Mary Hughes divide your farm between you two, some time before you contracted the timber mentioned by you in your examination in chief, she taking the western part for life and you the eastern part?

Ans. The foregoing question and any answer thereto is objected to, because unless said contract of partition, if any was made, must have been reduced to writing, or else the same would be void under the statute, and if reduced to writing, the writing itself only can be introduced.

Ans. Yes we did.

Ques.3. Was the division made between you and your wife made by a deed from you to her.

A-I Don't think I did. It might be so.

Q-4 State whether or not in selling the timber you have mentioned to Mr. Watts, if you intended to sell any of the timbers to him that stood on that part of the land which you had left to your wife.

A-I didn't intend to sell any of it and don't suppose I did

Q-State whether or not you pointed out to Mr. Watts the line between you and your wife before you and he closed up your trade, or you gave him any information that your wife had a life estate in a part of your farm.

A- I showed him the lines between us, don't remember of telling him that my wife only had a life estate.

Q-

Q. State whether or the Louisville & Nashville Railroad Co. did not after you had sold said timber to said Watts, condemn and take a portion of the land on which said timber was standing, if so about how much.

A- They did. They took about one and four tenth acres on the south side of the river and about three and seven tenth acres on the north side.

Q- About how much of the timbers which you had sold to the said Watts stood on the lands condemned by the said Railroad Co., if any.

A-I don't know exactly, but there must have been 50 thousand ft. or more. The finest timber which stood on the tract, stood on this land.

Q-7 How long was Watts to have to get the timber which you sold him from off your land.

This question is objected to because the contract is in writing and speaks for its self and no oral agreement as to the time when the timber was to be moved can be shown, contrary to the written contract.

A-My understanding was that he was to have two years, though it does not appear to be in the contract

Q-8 Was not the contract between you and Mr. Watts made with reference to the sale of the timber, made in the presence of Brilla Hughes.

A- I don't remember whether she was present or not, I remember that I was sick when the first \$25. was paid on the timber, and she took it and brought me back the money on it.

My impression is, that the first \$25. dollars was paid me before the contract was signed by me.

Q-9 Previous to the time you contracted ~~the~~ your land to the Plaintiff Co. had not you in connection with your wife sold to others than said Watts about all the other kinds of timber from off that part of your land that ly on the southern side of the North Fork of Powells River, and had not the same been cut and moved off said land before you contracted the said land to said company.

This question and any answer thereto objected to because immaterial.

A-Yes, off and on, on this land, we had sold about all the valuable timber that was on it, and all that we had sold, except to Watts, had been cut and removed from the land before I sold to the Company.

Q-10 In mentioning the sale of the timbers to Watts, to E. W. Pennington and to Mr. Emmert, state whether or not that you did not tell them, that Watts had only two years from the time that you made your contract with him, to get the timber from off the land and that time had expired sometime before you contracted your land to said Co.

A-I Don't think I ever mentioned this to them.

Q-While you and said Co. were negotiating a sale of your lands to it, and when Mr. Emmert would say that \$5. was all that he could give you for the land on the south side of the river, on account of the timber being sold from it, did you ever mention Watts name to him?

A- It don't seem to me like I did.

Q-11 When you first sold your land to said Company, did you not first sign a written contract for the sale, and if you say you did make and sign a written contract for the sale, state whether in that contract, you excepted any timber in favor of any person.

A- I did sign a written contract and Didn't make any exception in favor of any one for any timber.

Q-12-After you had made your written contract for the sale of your land to said company, did you not make it a deed and in the deed which you made to it did you not fail in that to make any exception in favor of any one for any timber.

A-I did. And I did not make any exceptions in said deed, that was the reason I kept saying something about the timber.

Q-13-Was ^{my} all the connection that E.W.Pennington had for the sale of this land to said Company as attorney for the same, was to draw the contract for the sale of the same and finally, to adjust and pay you over the purchase money for the same.

A-Yes that is all, so far as I know.

Q-14- After you had made your contract for the sale of said land and before you made your deed to it, did you not engage said Pennington as your attorney to clear up the title on your land, and did he not, in connection with J.C. Noeldo so and thatv he acted as your attorney in this matteruntil your deed was made to said company.

A--Yes it seems like they did.

Q15-Do you remember any specific time or place when you ever told E.W.Pennington before you had made your deed to said land that you had sold the Hemlock timbers on the same to said Watts If so, state as near as you can, when and where it was.

A- I remember one time I said something to you about it near Gibsons store in Pennington Gap, and you said all-right, hold still, and at another time at your office, I mentioned to you about the Watts timber, this was when Mr. Noel was present and some writings were being drawn up about the amount that was to be paid to my wife out of the sale of my land.

Q-15 Mr. Hughes was not the matter of the amount to be paid to your wife out of the sale of your lands, as well as the price to be paid to you ~~xx~~ for the whole of it, agreed upon by you and Mr. Emmert in R. L. Pennington's office in Jonesville and the terms of the contract written down in pencil and it was then and understood and agreed between you and said Emmert that E. W. Pennington should Typewrite the same and yoy would meet him and said Pennington in Pennington Gap, to formerly sign the contdract and did youb not meet said Pennington and Emmert in Pennington Ga Gapacording to your agreement and found the contract Typewritten and aftersome consultation with Orr &-:oel as your Attorney's sign and acknowledge the same: and the only hesitancy you had was on account of the existence of certain judgements against you as surety for William Green

A- I didn't remember it as stated in the question.

Q-16 Was it not plain to be seen by any one passing along through the land and along the public road at and before the time you sold the land to the company that all or nearly all of the valuable timbers were taken from off of it, except the spruce or hemlock?

~~xx~~

~~xxxx~~

A- ~~xxxxxx~~ If ^{he} was to be noticing he would think it had.

Q.17 Previous to the time you had contracted said land to said company, had not E.W. Pennington and Mr. Emmert passed along the road through your lands?

A. I saw Emmert several times, and also Mr. Pennington.

~~xxxx~~

Re-direct examination.

Q.1- Did Judge Pennington or Mr. Emmert at any of the times you mention to them about having sold the timber on said lands ask you whether the contract for the sale of said timber was a written contract?

A. They never named it to me that I have any recollection of.

Q.2. Do you know where the timber has been cut by Mr. Gish or his employees is situated?

A. Yes I have seen it.

Q. 3. State whether or not the said timber that has been cut by Mr. Gish or his employees is on the land which you got in the partition between you and your wife?

A. It is on my side. It is all on my side of the line.

Q.4. State whether or not if you know Mr. Gish cut and removed ^{said} some hemlock timber before you sold your land? to the company?

A. Yes. He furnished some timbers for the railroad bridge across the river.

Re-cross examination.

Q.1. At any time before you sold your land to said company, state whether you told Mr. Emmert or any one else connected with said

plaintiff company about said Gish getting said timber from off the land?

A. I don't remember saying any thing about it to Emmert or any one else connected with the company.

Q.2. From what part of your land did Gish cut this timber for said bridge work?

A. Mr.Gish had it cut in the same boundary of timber that I sold Mr.Watts.

Q.3. How long was it before you sold your land that said Gish cut this timber?

A. Something like a year.

Q.4. Did not this timber or nearly all of it come from off the L & N right of way?

A. I don't think it did.

And further this deponent sayeth not.

G.W. Gish
his mark

G.W.Gish, another witness of lawful age who being duly sworn deposes as follows:

Q.1. Are you one of the defendants in this suit?

A. Yes sir.

Q.2. I hand you a paper purporting to be a contract between yourself and J.G.Watts which I will ask you to file with your deposition as exhibit 2. Will ask you to state if this is the contract under which you claim the timber in dispute in this case?

A. It is. I file the same marked as requested.

Q.3. Did you cut and remove or have cut and removed any of the timber in that contract prior to August 3rd, 1905?

A. Yes I did. I think it was in July 1905. I cut some poles for Mr.Lillie, Foreman for the Gould Bridge Company to be used for timbers for placing girders to the piers, amounting to 480 feet. Eight of them 16 inches at the tip and 60 feet to the piece which they paid me for.

Q.4. State whether or not Mr. Emmert at the time you cut this timber and furnished it to the bridge company knew about it?

A. He did. Mr. Emmert and Mr. Dulaney were standing and talking to Mr. Lillie when I was sneaking the timber in off of this land. That is the timber I bought from Mr. Watts.

Q.5. Did you pay Mr. Watts the \$100.00 mentioned in this contract you have just filed?

A. I gave Mr. Watts my note for the timber and he gave the note to Mr. James Moore. I paid Mr. Moore \$40.00 of the note and remainder to Joshua Moore in full.

Q.6. State whether or not you ever notified the Black Mountain coal Land Company or Mr. Emmert or any other agent of the said Company that you had bought that timber before the 3rd, day of August, 1905.

A. I am not positive, but I had talked to Mr. Pennington about it with Mr. Barker in front of his store.

Q.7. Please state what you told Judge Pennington and the kind of conversation as well as you remember?

A. As near as I remember I asked if I had made a good trade and Mr. Barker stated he and his brother George had talked of buying the same timber but did not believe they could come out on it.

Q.8. Please state if you know how much hemlock timber was on the L & N Right of way which they took from Mr. Hughes?

A. My mill sawed up the timber that came off of the right of way and which Mr. George Barker bought of J. C. Noel amounting to 20000 feet. There had been other timber hauled away by Mr. Noel so I have been informed. All of the 20000 feet mentioned by me above was hemlock.

Q.9. State whether or not in your opinion there is as much as 100000 feet of hemlock on said land outside of the L & N right of way?

A. Including what I have taken off and which I had cut with

the remainder standing there is close to 100000 feet.

Q- State in your opinion how much timber has been felled and cut into sawlogs.

A- About 20 thousand feet.

X Examination by E.W. Pennington.

Q- Who and where was the contract between you and the said Watts and filed herein as exhibit 2 was written.

A- Mr. Jesse of Big Stone Gap, Va. drew up the contract. where Mr. Watts and I signed it.

Q- In Answer to Question 3, you state you let Mr. Lily have 480 ft. of Hemlock timber coming from off the Hughes land and that Mr. Emmert and Mr. Dulaney was present and saw you snaking it in: state what, if any thing, Mr. Emmert or Mr. Dulaney said to you about it.

A- Neither of them said anything directly to me, but I heard them discussing that they got the timber so close.

Q- Did you then tell Emmert or Dulaney or either of them that you were getting this timber under your Watts Contract.

A- I did not.

Q- On which side of the river did you deliver this timber to the Bridge Co., North, or South side.

A- On the ~~side~~ south side. and some of it in the middle of the river.

Q- How long was Emmert and Dulaney at this place that day.

A- As near as I remember, about one hour.

Q- Do You Know that they knew from what place you was getting this timber.

A- I suppose they did, for I had a span of mules snaking the timber some of it down the river and some of it, along the mountain in a few feet of them.

Q- In answer to Question 7 in your examination in chief, you say you ask Judge Pennington whether you had made a good trade in buying this timber, in that conversation, did not said Pennin-
~~ton say~~

gton say that the land on which the timber stood had been bought and paid for and that Hughes had made no exceptions of any timbers on the land, and that there was nothing of record to show that any of it had ever been sold to any person, or words to th a effect.

A-At that time, he did not, but turned and walked away, but about a year afterwards, he did use about that language.

Q-What all was said between you and said Pennington and you in front of Barkers store as refered to by you in answer to wuestion six.

A-MrM Barker ask me if I ha d Closed a deal on it, I told him that I had, and that I thought I had made A good trade as my mill was at that time there and had cut the eimber adjoining iton the right of way and as fine a bunch of timber as I had seen anywhere during which conversation Judge Pennington made some remark which I do not remember at this timeand walked back to his office.

Q-How long was this conversation to which you have refered after you had bought this timber from Mr. Watts.

A-Only A few days, not exceeding one week.

Q- How long after this conversation was it, till you got this 480 ft. you have spoken of.

A- About the same week.

Q-Then all of this conversation and the getting of this timber was before said Company purchased said land from said Hughes.

A- It Was.

Q- Were you talking in the prrence of said Pennington about havig bought said timber from said Watts, with any idea or view of giving him notice of your claim upon the same, or did you only hap-en to mention it in his presence.

A- I pnly hapened to mention the matter.

Q-You say there was another conversation with said Pennington concerning this timberbeing purchased by you from Watts, state wh when and where that was, if you remenber.

A- It was about the same place a year or so later.

Q-Was any one present in the last conversation had between you and Pennington, if so who.

A-Yes. J.M.Barker and JoeAusburn.

Q- In this last conversation refered to, do O understand you to saythat said Pennington told you that the land had been bought ad and paid for by the said company, and that aid Hughes made no exception of any timbers, and that there was nothing of record to show any sale of any timb rs on said lands to said Watts, or words to that effect.

A-This was about the language that was used, this was after~~were~~ I had been enjoined from cutting any more of the timber.

Q- Do you remember of having a conversation with said Pennington between the Depot, and Gibsons store on the side walk,

A-I don't rememb r it.

Q-In your first conversation with Barker concerning this timber do you know whether or not enough was said about it, that said Pennington understood what timbers you and said Barker was talking about.

A-MrM Barker and myself discussed it, Mr. Pennington Did not seem to care to talk about it.

Q-Did you know of any interest that said Pennington had in the matter when you had your first conversation with barker.

A-I did not know at that time that Pennington had any interestin the matter.

Q-At the time of your first conversation with Barker about this Watts Timber, where was your sawmill.

A-Standing at the North end of the tunnel through Stone Mountain.

Q. Had the piers across the river at the north end of said tunnel been built at the time you had your first conversation with the said Barker and Pennington?~~xxxxxx~~

A. Yes sir, as I now remember.

Q. Had the railroad company then put in the iron bridge across the river at this point?

A. They were working at it or commenced soon afterwards.

Q. How long did your saw mill stay at this place before you moved it?

A. A month and a half.

Q. Tell what property unincumbered you owned on or about the first of October, 1906?

A. I owned one lot on Margan Avenue in the town of Pennington Gap. Worth from four to five hundred dollars with the improvements on it, and the timber in litigation in this suit. Indebtedness about \$200.00, and no judgments.

Q. What did you pay for the lot you speak of?

A. \$100.00

Q. What improvements are there on it?

A. A retaining wall 50 feet long and 5 feet high costing about from \$50.00 to \$60.00, foundation of stone for an eight room house worth about the same, one well 117 feet deep cost \$117.00, Fence and fruit trees and excavation \$150.00.

Q. Do you remember said Pennington calling you into his office in the town of Pennington Gap, after the injunction in this case had been issued and before process had been served upon you, and talking to you about this matter?

A. Yes, I remember.

Q. Was not this the only conversation you and said Pennington had after the injunction had been granted?

A. No, we had the second conversation above referred to at Barkers store, and which was after the one in said Pennington's office and after process had been served on me.

Q. Mr. Gish what in your opinion was a fair market cash value of the timbers on the Hughes land which you are claiming, on the 3rd, day of August, 1905?

A. About \$150.00.

Re-direct examination.

Q-I will ask you to file the \$100. note which you gave Mr. Watts with the endorsements thereon, for this timber, marked as exhibit 3.

A- I file the same as requested.

Q-In the first conversayion you had with Mr. Barker in the front of his stoe with regard to the purchase of this timber, did you or Mr. Barker, in the presence of Mr. Pennington, speak of the timber as being on the Hughes land, or as being the sold by hughes to Watts.

A-We did as near as I remember.

Q-I will ask you to state how that converstation came about and all was said by you, or Mr. Barker in Judge Penningtons presence.

The foregoing question and any answer thereto is objected to because the witness on page 11 has already stated what happened and what was said between him and Mr. Barker and Himsalf.

A-Mr. Barker ask me if I had closed a deal for the Watts Timber on the Hughes land, I told him that I had, and ask ~~him~~ them if they thouhgt I had made a good trade. ~~He, Barker said he did not know, that he and his brother George had talked of buying it and was afraid they would loose out, that they didn't think the timber was there.~~

It was at this point that Judge Pennington left and went to his office.

Q- X Examination By Pennington.

Q-In this conversation to which you have just refered in the question just preceeding, did you tell Barker, when he ask you if you had closed a deal, that you thought you had made a good trade, or did you ask him what he thought aboutthe trade.

A-I do not remember at this time which it was.

Further this deponent saith not.

Geo W. Lisk

J.C.Noel another witness, after being duely sworn,deposes and says:-

Q-1. Were you attorney for G.W. Hughes in the condemnation case of theB Blackmountain Railway case vs. him and in the trade, whereby he sold his land to said company.

A- I was, in connection with James W, Orr, my law partner.

Q2- Who negotiated said trade on the part ofsaid Blackmountain Coal Land Co.

A-W.B.Emmert did the most of it the negotiations were in part had at th the office of E.W.Pennington, they were on hands for quite a little bit sometimes, or most frequently, the conversations were had with MR, Emmert away from Penningtons Officemost of the time. They purchase of the Hughes land grew out of certain comdemnatoon preceedings mentioned in the preceeding question.

Q-3 During any of these conversations did you as attorney for Mr. hughes or did you hear Mr. hughes himselftell Mr. Emmert, or any other agent of the Black Mountain Coal Land Co, ~~xxxx~~ that he had sold certain Hemlock timber to Mr. Watts, or in any way call the attention of said agen to such sale. If so, please state what was said as near as you can remember it.

A-I have a very indistinct recollectionof what occured in anf of the conversation s I have an impression that the matter was discussed, more or less on one or two ocasions by Mr. Hughes and myself in the presence of Mr. Emmert, and I think the conversation was had at Judge pennington'so office.

In discussing the contract for the land which Mr. Hughes was required to sign, Mr. Hughes ask me if the Watts Timber hadn't better be excepted some one spoke up, I am not positive who, that Watts contract had run out, or expired and I then told him that it was not necessary to put the exception in the contract.

Q- You wrote the contract that was filed as an exhibit no. 1 with the deposition of G.W.Hughes, did you not.

A- I did.

Q- I will ask you to state that afterwards and at the time the \$25. deferred payment was paid by J.G. Watts to Mr. Hughes you did not write an additional contract or deed reciting full payment of the consideration and whereby Hughes conveyed to said Watts the said timber, and if so to tell what became of said contract, or deed if you remember and also give the dates if you remember.

The foregoing question and any answer thereto is objected to, for any other purpose than to show payment for said timber, because, the plaintiff in its bill, ask that defendants specifically answer under what contract, or title they claim said timber, and whereupon said defendant answered that they claimed title by virtue of the two papers quoted in his answer and by virtue of exhibits Nos. 1 and 2 filed with these depositions. He will not be allowed now to shift his defense from an executory contract to a deed.

A-I wrote either a deed or a supplemental agreement reciting the fact that all the purchase money had been paid, but what else it recited, I have absolutely, no recollection. The paper was acknowledged by Mr.

Hughes, and was left with me to be recorded, I think that I gave it to Mr. B.M.Morgan, who was then Clerk and directed him to record the same I have no recollection, however of paying him the cost of its recordation, the date of it has entirely slipped my memory. If I did not give it to Mr. Morgan, it has been lost, I have searched for it in my office time and again and never have been able to find it.

And further this deponent saith not.

----- J.B. Nach -----

A. Johnson, another witness of lawful age being duly sworn deposes and says:

Q. State your age, residence and occupation?

A. My age is 57. ;y residence is Pennington Gap, Lee County, Virginia, and occupation lumber man, merchant, etc.

Q. 2. I will ask you to state if Mr. G. W. Gish ever proposed to sell to you the hemlock timber on the Hughes land at and near the northern terminal of the tunnel through the Stone Mountain in the Pockett?

A. Yes sir.

Q. 3. Did you about the same time have a conversation with Mr. W. B. Emmert about said timber, and if so state what he said if any thing, about it?

A. Yes sir immediately after the conversation that I had with Gish I talked to Emmert about it. I dont remember exactly the conversation but in effect it was this: that ~~xxxxxxxx~~ his company claimed the land and if I bought it I would buy a law suit.

Q. 4. When Mr. Gish proposed to sell you this timber was his mill not then sawing a yard of logs near said tunnel, and did he not propose also that if you bought the timber from him to saw it up at the ~~xxxxxx~~ his mill at the same set?

A. I cant answer the first part of the question as I do not know where his mill was, but he did propose to saw it for me with his mill if I bought it.

Cross Examination.

Q. 1. At the time you talked to Mr. Emmert about this timber and about Gish having proposed to sell it to you, did not Mr. Emmert also state to you in that conversation in addition to what you say he did say, that his company had bought and paid for the land and if you bought the timber you would buy a law suit?

A. I dont remember that he said it was bought and paid for but I thought from what he said that he owned the land.

Q. 2 Do you remember all the conversation between you and Mr. Emmert about it?

A. No I do not.

Q.3 Then he may have told you that it had been bought and paid for by his company and had forgotten that part of the conversation?

A. Yes sir.

Q.4. Do you remember the season of the year Mr.Gish proposed to sell this timber to you?

A. I think it was two years ago last fall, the first time he propped to sell it to me.

Q.5 State whether or not at the time he proposed to sell you this timber the Black Mountain Railroad Company had made its tract and was running its cars over the road up into the mountain?

A. I dont remember where they were or not.

And further this deponent sayeth not.

A. Johnson

G.W.Gish, being reintroduced deposes as follows:

Q.1 Please state the time as near as you can when you first proposed to sell the timber in controversy to Mr.A.Johnson?

A. At the time I propped selling this timber to Mr.Johnson my partner, Mr.Woodyard had desolved partnership with me and having sawed out the yard for Mr.George Barker with the exception of ~~appx~~ 4000 feet for Mr.Bill Wax, the yard was completed, and being inexperienced with the saw mill business and Mr.Woodyard leaving me, I decided to dispose of said timber to some one and offered same to Mr.Johnson while the mill was at the timber. He claimed that he was afraid to buy the said timber but did not believe there would be any danger, and as we could not agree on the price of the timber we did not trade. This was about the middle of August, 1904, I moved my mill away to the Jew Mines and sold same to them. I then a year later, I proposed to sell the timber again to Mr.Johnson and he said that he had talked to Mr.Emmert in regard to the timber and that he would buy a law suit if he bought it. I think this last conversation I refer to was after Hughes deed was made to said company.

All the foregoing ~~MEM~~ answer objected to because immaterial and irrevelant.

And further this deponent sayeth not.

Geo. W. Gish

Further taken of these depositions is adjourned to the office of L.T.Hyatt, Jonesville, Virginia, on the 25th, day of April, 1907.

W. L. Hopkins
Com,

I hereby certify that the foregoing depositions of Geo. W. Hughes, G.W.Gish, J.C.Noel, and A Johnson were taken, subscribed and sworn to before me at the time and at the place mentioned in the caption.

Witness my hand this the 19th. day of April, 1907.

W. L. Hopkins

Commissioner In Chancery.

irrelevant.

All the foregoing were answered, objected to, perjury imputed and

And further this deponent says, not.

-18-

Receipts
Witnesses,
J. Watt 50
Joshua Moore 50
A. Johnson 50
Geo. Hughes 50
Robert Abney 50
Com. du 5.00
\$7.50

Received by mail &
filed Apr. 25, 1907.
H. C. Ewing,
Clerk.

Commissioner in Chancery.

Black Mt.Coal Land Co.,Plaintiff.

Vs.

In Chancery.

W.G.Gish et al.

Defendants.

The depositions of E.W.Pennington _____
_____ taken before me J.J.Yeary, a justice of
the peace in and for the county of Lee and State of Virginia, at
the law office of E.W.Pennington, in the town of Pennington Gap, Vir-
ginia, on the 17th day of May, 1907, and between the hours of 8 A.M.
and 5. P.M., to be read as evidence in of the Black Mountain Coal
Land Company Incorporated, Plaintiff, in a certain suit in Chancery
pending in the Circuit Court for Lee County, Va., wherein the said
Black Mountain Coal Land Company, Inc., is plaintiff and Geo.W.Gish
and Robert Asbery ~~xxxxxxx~~ are defendants.

Present E.W.Pennington Attory for the Plaintiff, and

" L.T.Hyatt, Attorney for the defendants.

The Witness E.W.Pennington, after being duly sworn, deposes as
follows:

My name is E.W.Pennington; I reside in Pennington Gap, Lee Coun-
ty, Virginia, and am 46 years old.

I am now, and have been some time the local counsel of the
plaintiff; that is, counsel for said plaintiff in Lee County, Va. I
local
was also, counsel for W.B.Emmert, B.L.Dulaney and John H.Cladwell, -
the parties, who, as I remember contracted with Geo.W.Hughes for his
lands in the Pocket country, about the first days of Sept., 1904. My
recollection, I wrote the contract whereby Mr.Hughes sold, or agreed
to sell his said land to said Caldwell, Dulaney and Emmert. This
contract grew out of, if not directly, indirectly, condemnation pro-
ceedings of the Black Mountain Railway Company through the lands
of Mr.Hughes. After said parties made said contract with said
Hughes, it was discovered that the United States had some judgements
against Mr.Hughes. So the purchasers of the said land, would not
settle up with Mr.Hughes until he had paid, or settled said Judge-
ments, and Mr.Hughes worked at that matter for a good long while

before he got these Government Judgements settled. After Mr. Hughes got these judgements settled and the judgement lien docket marked up satisfied, there was sent to me, as I remember, a draft of a deed by Mr. Paul Dulaney to be signed and acknowledged by Mr. Hughes, conveying this same land to the Black Mountain Coal Land Company, Incorporated. Why the deed was so drawn, I don't know; but supposed that the Contract of said Dulaney, Caldwell and Emmert had been transferred to said Company.

At no time before said Hughes signed his said contract, whereby he sold, or agreed to sell his said land to Caldwell, Dulaney and Emmert, did, I know, or ever hear, that Mr. Hughes sold or contracted any timbers standing or being on the lands to J.G. Watts, or to any one else. I had heard that timbers previously had been sold from this tract of land, but understood that all that had been sold had already ~~that I recollect, and I believe had I heard about it,~~ been taken from off the land. Nor did I know, or ever hear, that Mr. Hughes had contracted a portion of the timbers standing on said land to said Watts, or to any one else before Mr. Hughes made, signed and delivered his deed to said land to said plaintiff. The last money paid on this land, which, I believe, was about \$1600.00 was paid to Mr. Hughes at the time he made his deed to the land.

Some little time after, (as I remeber the matter) said Hughes had made his said deed, and all the money had been paid to him, I met Mr. Gish in Pennington Gap, somewhere between Gibson's store and the depot, and he told me that he had bought from a Mr. Watts some timbers standing on the Hughes lands, but did not say what kind of timbers. I remember telling him that he was too late in giving information of the claim; ~~that~~ I asked him if the contract was in writing, and he said it was, and signed by said Hughes, and showed that Hughes had sold to Watts a portion of the timbers on the land; I remember asking him whether his contract with Watts, or Watts' contract with Hughes was recorded and he told me it was not, but that Mr. M.R. Gilley held it. Then I told him, as above stated, that his information came too late, because the Company had bought the land and paid the en-

I would have recalled it

tire purchase money for it,

I

that I remember

Mr. Hughes never told me at any time before he made his deed and the money was paid him for said land, that he had sold any portion or part of the timbers to Watts or any one else that had not been taken off the land, at the time he contracted it.

I do not remember, Mr Gish or any one else discussing with Mr. Barker in my presence that he had bought from Watts, or claimed to own any of the timbers standing or being on the said Hughes land. If he did do so, and I then knew what timbers they were talking about, it had been forgotten by me at the time Mr. Hughes made his contract, selling the lands to Caldwell, Dulaney and Emmert. Nor at any time before the deed, did it ever come to my mind. Nor do I remember any thing at all about it now.

Cross&Examination,

ques.1. Have you the original contract between Geo.W.Hughes and Caldwell, Dulaney & Emmert, or a copy of it? If so, please file it.

Ans.-- I have not the original, nor do I find that I have a copy.

Ques.-- Do you remember the date or about the date of said contract

Ans.-- About the 2nd day of September, 1904. The contract, I think, is of record in Lee county clerks office.

And further this deponent saith not.

E. W. Pennington

Virginia,

Lee County, to-wit:

I, J. J. Yeary, a justice of the peace in and for the county and State aforesaid, do certify that the foregoing deposition of E. W. Pennington, was duly taken, subscribed and sworn to before me in My county aforesaid, at the time and place and for the purpose in the caption mentioned.

Given under my hand this 17, day of May, 1907.

J. J. Yeary J.P.

Black Wh. Coal Sampled

vs. } Deposition

H. W. Gish et al.

Filed May 23, 1909

H. C. J. Ewing.

Attest.

To George W. Gish and Robert Asbery:

Take NOTICE that on the 6th day of December, 1906, at the law office of E. W. Pennington, in the town of Pennington Gap, in Lee County, Virginia, between the hours of 9 A.M. and 4 P.M. of that day, the undersigned will proceed to take the depositions of W. B. Emmert, and others, to be read as evidence in its behalf, in a certain suit in chancery, depending in the Circuit Court for Lee County, Virginia, wherein the undersigned Black Mountain Coal Land Company, is plaintiff and you are defendants; and if from any cause the taking of the said depositions be not commenced, or, if commenced be not concluded, on that day, the taking thereof will be adjourned from day to day, or from time to time, at the same place, or to other places, between the same hours, until the same shall be completed.

This the 30th day of November, 1906.

Black Mountain Coal Land Company, Inc.,

By

E. W. Pennington

Counsel.

Black Mountain Coal Land Co.

Notice to Take

Depositions.

George W. Gish et als.

Executed on the 1st day of

Dec., 1906, by delivering true copies

of the within notice to George

W. Gish and Robert Asberry.

D.S.

For P.M. Ball, S.L.C.

Counsel.

===== #
Black Mountain Coal Land Co., Inc., Plaintiff. #

Vs. #

Depositions. #

George W. Gish et al. Defenants. #
===== #

The depositions of C.M. Dulaney, H.F. Kilburn, and W.B. Emmert

taken before me, Charles C. Bales, a notary
public for the County of Lee and State of Virginia, on the
6th day of December, 1906, ~~xxxxxxxx~~ in pursuance of the annexed no-
tice, at the law office of E.W. Pennington, in the town of Pennington
Gap, in Lee county, Virginia, and between the hours of 9 A.M. and 4 P.M.
of that day, to be read as evidence in a ~~suit~~ ^{certain suit in equity,} in which the Black Moun-
tain Coal Land Company, Incorporated, is Complainant, and George W.
Gish and Robert Asberry are defendants, pending in the Circuit Court
for Lee County, Virginia;

Present E.W. Pennington, Attorney for the said Complainant; and

" C.C. Bales, Attorney for the said defendants.

C.M. Dulaney, a witness of lawful age, after being duly sworn, de-
poses as follows:

Q.1. Give your name, residence and occupation.

Ans. My name is C.M. Dulaney; I reside at Pennington Gap, Va.; and I
am a civil engineer.

Q.2. In whose employment are you now?

A. I am in the employment of the Black Mountain Coal and Land Co.
the Plaintiff in this case.

Q.3 I hand you exhibit A. filed with the plaintiff's bill in this
take
case; please ~~read~~ the same and read it, and state whether you in any
way know the lands mentioned in said exhibit, and if so tell what
your acquaintance is with said lands?

A. I have examined the paper and see that I am acquainted with the
land and know its ~~is~~ the location and something of the coal on it
I have known the land for three years or more.

Q. 4 You in your previous answer say you know something of the coal on the land mentioned in said exhibit A.; please state the extent of your knowledge of the coal on said land and how you got your information concerning the same?

Q. There is a coal seam worked by the Pocket Coal Co. now the Pennington Coal Company that extends across this property. There is an opening on this seam on the Pennington land below this property and one at Sand Lick Creek ^{workable} above this property on the same coal seam showing ~~the~~ thickness. There is another coal seam on this property showing in the north end of the railroad tunnel which in all probability will be worked some time. The two openings first spoken of are about a thousand feet from the edges of this property.

Q. 5. Have you traced the coal measures in the Pocket Country and have ^{you} in any way familiarized yourself with the seam of coal first mentioned by you as being worked by the Pennington Coal Company, and showing also at Sand Lick Creek, if so state whether from a geological standpoint could you say that the same coal passed through or under the said Hughes land?

A. I have traced the coal measures in the Pocket Country.

Y
Yes I have done considerable prospecting on this seam and have traced the seam through the Hughes land between the two openings first referred to.

Q. 6. State ^{for what purpose the} ~~whether~~ said Hughes tract of land is most valuable if you know?

A. The land is most valuable for the coal.

Q. 7. If you know any thing of mining coal state whether or not it is necessary to have ~~and~~ to use timbers for the purpose of mining coal?

A. I do know something about mining. Timber is a necessity for mining purposes.

Q. 8. From your information and knowledge of mining coals and from your acquaintance of the said Hughes tract of land and the timbers that are growing and standing on the same, state whether in your opinion there are more timbers growing and standing on said land

than would be necessary to mine the coal in ~~and~~ on and under said tract of land?

A. I don't believe there is enough timber to mine the coal, being on the said land.

Q.9. If you know tell what is the nearest timbers ^{to said land belonging to} ~~belonging to~~ said plaintiff?

A. I don't know.

Q.10. What is the nearest timbers that you know of to said land and which belongs to said plaintiff?

A. Two miles or thereabout is the nearest timbers I know of. This timber that I have in mind is on what is known as the Tobe Smith land.

Q.11. State what kind of land the Tobe Smith land is?

A. A small part of it is level land, but the most of it is mountain land. It was bought for mineral lands.

Q.12. Could any of the timbers on the Tobe Smith land in your opinion be spared in mining the coals on it?

A. I have no opinion on the subject.

Q.13. Supposing timbers could be spared from the Tobe Smith land and taken to the said Hughes land state whether it would cost more or less to take the timbers from the said Smith land than from the Hughes land in order to mine the coal on the Hughes land and in your opinion how much more or less would it cost?

A. It would cost more from the Smith land but I don't know how much more.

Q.14. State whether you know any thing about the defendants in this case or either of them cutting and felling any timber on said Hughes tract of land. If so state where the same was cut and about how much thereof?

A. No nothing except from heresay. I never heard either of the defendants say any thing about it.

And further this deponent sayeth not.

C. M. D. L. L. L.

H.F.Kilbourne another witness after being duly sworn deposes as follows, to-wit:

Q.1. Give your name, residence and occupation?

A. My name is H.F.Kilbourne; I reside at St. Charles in this County; and I am a farmer.

Q.2. In whose employment are you now if any ones?

A. The Black Mountain coal and Land Company's.

Q.3. State whether you know the tract of land described in this case in exhibit A. filed with said Plaintiff's bill and known as the George W. Hughes tract of land?

A. I know this tract fairly well.

Q.4. State whether you have been on said Hughes tract of land recently and if so tell when you were on same and for what purpose?

A. Yes I have been on the land the fourth day of this month. I went to make an estimate of the timber.

Q.5. Who showed you the timber that you estimated, if any one? and where was it situated on said land?

A. Mr. Gilam who lives on the Hughes place showed me the timber. He told me the timber that he showed me had been cut by Mr. Asberry. ~~XXXXXXXXXX~~ The timber shown me was on the north side of Stone Mountain and between the top of said Mountain and the north fork of Powells River and just above the north end of the L and N. tunnel through the said mountain.

Q.6. In going on said Hughes land did you find any timbers that hadn't been cut from said land. If so what kind and how much thereof?

A. I found some timber cut. I think it was all spruce pine. I found ninety eight logs.

Q.7. Did you make a memoranda of the number of logs you found their respective lengths and diameter, if so please file the memoranda you made marked Z. as a part of your deposition?

A. I did make a memoranda of the logs I found cut on said land and here file the same as requested. As to the lengths and diameters of the logs shown in said memoranda they are only estimates. I did ~~not~~

not have a rule with me to take the lengths and diameter of the logs.

Q.8. Have you made or had made a calculation of the number of feet in said 98 logs supposing your estimate of lengths and diameters to be correct, if so how many feet in said logs?

A. I havent made any calculation but my idea is there is from 12 to 15 thousand feet of it.

Q.9. From the appearance of the logs you found on said land how long did they seem to have been cut?

A. They looked fresh. I mean the cutting looked fresh. Possibly they may have been cut a month or two.

Q.10. If you know state what the character of said logs ~~fm~~ were you found cut on said land?

A. Part of them were nice clean logs. And a few of them very sorry.

Q.11. What would said logs been worth per thousand feet before they were cut from said land? that is on the stump?

A. I have'n't much idea. Perhaps two dollars would be a good price.

Q.12. State whether the cutting of said logs from said land has done the land any permanent injury and damages, if so in what way and to what extent?

A. I can't see that it has damaged the land any. It is mostly a bed of rock and if trees falls on it it wont hurt it.

Q.13. Supposing the timber s cut by said defendants were to be need ed to mine the coal on said land would not the fact of cutting the ~~exxx~~ same be an injury to the coal farm, the extent of which would be incapable of definately fixing?

A. Of course it would bean injury to take the timber away from it both for farming and mining purposes as there is very little timbe on the farm. I couldn't say what the damage would be either for farming or mining purposes to take the timber off the land.

Q.14. State whether the defendants or either of them told you that they had cut the timbers which you estimated or any part of the

same?

A. Mr. Asberry told me that he cut the timber. He told me this a month or more ago.

Q.15. Did Mr. Asberry tell you at whose instance he cut the same and how much he had cut?

A. He said he was cutting it for Mr. Gish and had cut 103 logs.

Q.16. You stated that you are now in the employment of said plaintiff: about when did you begin your employment with said plaintiff?

A. More than a year ago.

Q.17. What has been your duties ^o as employee of said plaintiff?

A. ~~x~~ To do such things as I was directed to do for them.

Q.18. Did the defendants or either of them have your consent for said plaintiff to cut said timber before they began cutting the same?

A. They did not,

Q.19. When was the first information you had that said timber had been cut?

A. It was when Asberry told me. That was the first I knew it was cut. I heard of the cutting and in two or three days thereafter went to see Mr. Asberry about it.

And further this deponent sayeth not.

J. H. Kilbourn

W.B.Emmert, another witness after being duly sworn deposes as follows:

Q.1. Give your name, residence and occupation?

A. My name is W.B.Emmert; my residence is Pennington Gap, Va. ; and my occupation is coal mining.

Q.2. Did you ever have any connection with the Black Mountain Coal Land Company, if so state what it was?

A. I have been Vice President of that Company since its organization and until the last few months was actively in charge of all of its business affairs.

Q.3. Are you acquainted with the tract of land mentioned in this suit as the George W. Hughes tract of land and lying in the Pocket country on the north fork of Powells River?

A. I am and have known it for four or five years.

Q.4. Who made the contract of purchase with said Geo.W. Hughes for said land for said Company?

A. I did.

Q. 5. At the time you purchased said land for said Plaintiff for what purpose did you buy the same?

A. We bought the land as coal land and to use in connection ^{with} ~~of~~ adjoining coal lands owned by said Company, and considered that as its chief value.

Q.6. State whether you or any official of said plaintiff knew or ever heard of a man by the name of Watts or G.W. Gish having any claim of interest on any of the timbers situated on said lands, if so state about when it was you first heard of such claim being made by said Watts or said Gish?

A. ~~Was~~ I never did or any official of my Company that I knew of or heard of. I never heard of such claim by Watts. Sometime after the purchase of the land from Hughes by myself for said Company Mr. A. Johnson of Pennington Gap approached me with the statement that a Mr. Gish claimed some timber on the Hughes place and asked me if Gish owned it. My reply to Johnson was that Gish owned nothing in the way of timber on the land we had purchased from Hughes. This is the first I had ever heard of Gish

or any one else claiming any timber on said land and I heard nothing more of that claim until on the day of the sale of the Pockett Coal mine which I believe was in June 1906, at which sale Mr. H. F. Kilbourne told me that Mr. Gish was claiming some timber on the Hughes land. Mr. Gish was standing a few feet away at the time and I called him to me and told him what Mr. Kilbourne had said and stated to him that he did not own any timber that we purchased it clear of all claims. Mr. Gish in reply made some statement as to having purchased the timber but did not state from whom nor when but turned and walked away. These are the only conversations I have ever had with any one about it or any notice of Mr. Gish's claim if any he has.

Q.7. Do you remember that at the time Mr. A. Johnson approached you with reference to Mr. Gish claim some timber on said Hughes land whether the purchase price of said land to said Hughes had been fully paid. tell your best impression you have about this?

A. At the time of the conversation with Mr. Johnson the purchase had been made and the deal had been entirely closed for some time and my impression is that all the purchase money had been paid and the deed taken but I am not entirely clear as to this.

Q.8. State whether you communicated to any attorney of said Co. the information or statements which Mr. Johnson had given you, if you remember?

A. I do not think I did.

Q.9. Had not the entire purchase money for said land been paid at the time said Johnson had said conversation with you, would you not have communicated his statements to you to some attorney of your Co. in order to have ascertained the legal effect of said claim of said Gish?

A. I think I would have done so.

Q.10. As a mine operator state whether or not the timbers on said Hughes place are necessary to be used in the mining of the coal on said lands in the event it should ever be mined?

23	logs	12 ft. long	20 in
17	" " "	14 "	16 "
16	" " "	12 "	30 "
17	" " "	12 "	14 "
<u>25</u>		14 "	14 "
98			

Exhibit
"Z"

A. My judgement is that the mining of the coal on the Hughes land would require all of the timber carried on the land and probably a great deal more.

Q.11. ~~xxxxxxx~~ Has the plaintiff in this case any surplus timber at any other points which it could use in mining the coal on the Hughes land, if so state where they are and whether they could be obtained for that purpose as cheap as from off the Hughes land?

A. I do not know of any surplus timber that The Black Mountain Coal Land Company has. If it should have any I am sure that it is not located so as to be available for mining purposes on the Hughes land.

Cross examination by Defendant.

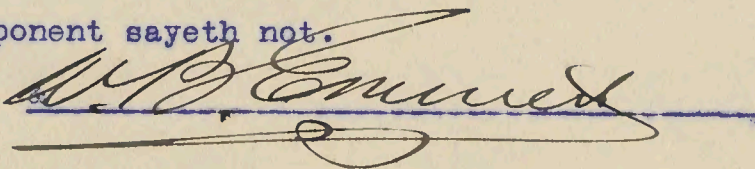
Q. 1. At the time you purchased the Hughes tract of land was not Judge Pennington Attorney for your Company, and didn't he help work up the trade with Mr. Hughes?

A. Yes sir. He was our Attorney and was connected with the negotiations that led to the purchase.

Q.2 Did Mr. Noel, ^{also} assist in ~~xxxxxxxxxxxx~~ closing the deal with Mr. Hughes?

A. My recollection is that Mr. Noel represented Mr. Hughes and not our Company.

And further this deponent sayeth not.

A handwritten signature in blue ink, appearing to read "W. D. Emmet", is written over a horizontal line. Below the signature is a large, stylized flourish or underline.

-10-

State of Virginia,)
 (to-wit:
County of Lee,)

I, Charles C. Bales, a notary public for the County of Lee in the State of Virginia, do hereby certify that the foregoing depositions were duly taken, reduced to writing and signed by the witnesses, respectively, before me at the place and the time therein mentioned, pursuant to the annexed notice.

In witness whereof I have hereunto set my hand this the 6th, day of December, 1906.

My commission expires March 9th, 1910.


Notary Public.

Black Mt. Coal Land

v. Depositor

Geo. W. Gish

Filed Dec. 8, 1906.

H. C. Gowing,
Clerk.

(No P. fee \$4⁵⁰)

The deposition of W.E.Thompson, taken before me Geo.P.Cridlin Commissioner in Chancery for the Circuit Court of Lee County, Virginia, on the 25th day of April, 1907, at the office of R.L.Pennington in Jonesville, Virginia (this place being in lieu of H.T.Hyatt's office by agreement of counsel) pursuant to adjournment taken on April 19th 1907.

The witness W.E.Thompson being duly sworn says:

Q.1.-- What is your occupation?

A.-- Surveyor.

Q.2.-- Were you employed by the Black Mountain Coal Land Co. to survey the land purchased by said Company from George W. Hughes?

A.-- I was.

Q.3.-- State the time you made a survey of said land as nearly as you can remember it.

A.-- It was along late in the Fall of 1904, as well as I remember. I have not my notes with me.

Q.4.-- Were you informed by any one about the time you made said Survey that G.W.Gish claimed to own 100,000 feet of hemlock timber on the said tract of land, if so state who informed you of the matter and what was said about it?

A.-- Mr. Gish told me that he owned the pine timber that was standing near the mouth of the tunnel. He did not say how much, but showed me a small boundary there and said that that was his timber. Mr. Gish told me that he had bought the timber from Mr. Watts. I also heard Mr. George Hughes talking something about the timber there. He said that Mr. Watts had failed to take the timber off according to his contract, and the way I understood him he claimed that the timber was his, Hughes' timber. I don't remember of hearing anything else about it.

Obj.--The foregoing question and answer is objected to so far as the same may be intended to be used by the defendant Gish for the purpose of notice to the plaintiff of his interest or claim in the timber.

R. L. Pennington for plff.

Q.5.-- Did the boundary of timber pointed out by Gish include all the Hughes land on the side of the Mountain east of the L.& N. right of way, or not?

A.-- Yes, it included the boundary on the south side of North

Fork and north side of Stone Mountain, and on the east side of the L. & N. Railroad.

Q State whether or not that boundary of land is heavily or sparsely timbered.

A.-- Down near the North Fork it is heavily timbered, but up nearer the top of the mountain there is none to amount to anything. About two thirds of the way from the top of the mountain down to the North Fork is where the heaviest growth of timber is, and along there it is pretty heavy timber.

Q.3.-- What kind of pine timber is that?

A.-- It is spruce pine, which is also called hemlock.

Cross Examination.

X.Q.1.-- You say in answer to question 2 that you were employed to survey the tract of land sold by Hughes to the Black Mountain Coal Land Company, state what the object of having the land surveyed, was?

A.-- I suppose it was to ascertain the acreage. Mr. Pennington told me that he was to pay so much per acre for the land on one side of the North Fork and a different price per acre for the land on the other side of the Fork.

X.Q.2.-- Did you know anything concerning the extent of the contract or the terms of the contract between Hughes and the Black Mountain Coal Land Co.?

A.-- No, I did not, other than that stated above.

X.Q.3.-- I understand from your deposition that Mr. Hughes that Gish or Watts had any interest in the timber?

A.-- As I remember he said they had failed to pay him for it, or had failed to take it off according the contract, and that he claimed timber.

Re- Examination.

Q.-- State if you remember how much land is in the Hughes tract between the North Fork and the top of the mountain and east of the L. & N. Railroad?

A.-- I don't remember the exact acreage.

Q.-- Then give your best opinion as a surveyor, as to how much land there is in that boundary?

A.-- I suppose there is some ten to twelve acres in that piece.

And further this deponent saith not.

Wit. claims one day .50

W.E. Thompson

The further taking of these depositions is adjourned to Monday April 29th, 1907, at the same place.

Met pursuant to adjournment at the office of R.L.Pennington in Jonesville, Va. on the 29th day of April, 1907.

Present L.T.Hyat counsel for deft. and R.L.Pennington of counsel for plaintiff.

C.C.Douglass a witness of lawful age being duly sworn deposes as follows:

Q.1.-- Prior to August the 1st, 1905, by whom were you employed and in what capacity?

A.-- I was employed by the Black Mountain Coal Land Coal Co. as timber Inspector.

Q.2.-- Are you acquainted with a boundary of timber on the G.W.Hughes land on the North side of Stone Mountain and east of the L. & N. right of way?

A.-- I am.

Q.3.-- State whether or not you knew who claimed that boundary of timber prior to August, 1905.

Obj.-- The foregoing question or any answer thereto is objected to because this agent is a special agent and information or knowledge obtained by him about matters out of the line of his duty is not information or notice to his master, the Black Mountain Coal Land Co.

R. L. Pennington.

A.- I did know. It was claimed by old J.Watts.

And further this deponent saith not.

Wit Claims one day .50

C.C. Douglas

Virginia, Lee County, to-wit:

I, Geo.P.Gridlin, a Commissioner in Chancery for the Circuit Court of Lee County, Virginia, do certify that the foregoing deposi-

tions of W.E.Thompson and C.C.Douglass were taken ~~before me at the~~
sworn to and subscribed before me at the times place and for the pur-
pose in the caption mentioned.

Given under my hand this the 29th day of April, 1907.

Geo. P. Cudde
Comr. in Chy.

Black Mt. C. & L. Co.

vs. { In Chy

L. W. Irish

Depositions	Cost
W. E. Thompson	50
C. C. Douglas	50
	<u>100</u>

Filed April 29, 1907.

H. C. O. Ewing, Clerk

Court Fee \$150

LEE CIRCUIT COURT.

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston et al.

AFFIDAVIT OF E. W. PENNINGTON.

Affiant, E. W. Pennington, states on oath as follows:
I had known Mr Pruitt from the time I was about eighteen years old until the time he executed the contract of December 20th, 1902, to Mr Emmert and his associates. He had worked at my father's when I was a boy. I had never heard his sanity questioned until after the date of that contract, and I had never seen anything that led me to suspect that he was mentally unsound. I was with Mr Emmert at Mr Pruitt's house when the last mentioned contract was executed, and was there all together, that day, several hours. I went there in the first instance with the idea of getting him to comply with a contract which he had made to Slemp, and make a deed pursuant to it, but found him very much out of sorts with Slemp, and very suspicious of him, and, therefore, did not make any attempt to get him to live up to that contract. He said, however, that he knew Mr Emmert and liked him very well and that if he would come up there he believed he would trade with him, provided he could make a trade

with him that would protect him, Pruitt, against this Slempp contract. I then left and subsequently, that same day, met Mr Emmert and told him what Mr Pruitt had said, and went back to Mr Pruitt's with Mr Emmert. When I met Mr Emmert that day, Mr W. T. Orr, a Justice of the Peace was with him, and he accompanied Mr. Emmert and myself to Mr Pruitt's. Mr Emmert told Mr. Pruitt that he had understood from me that he, Pruitt, was willing to sell to him his land, and offered, as I recollect, twelve dollars and a half per acre. Mr. Pruitt refused this and said furthermore that he had lived on the land a long time; that his wife was buried on it, and that he believed he would rather sell the coal and certain privileges and keep the surface and the timbers. Mr Emmert asked for his price on the coal and mining rights and certain timbers and Mr Pruitt replied that he would take five dollars an acre. Mr. Emmert asked him if this was his least price, and he said it was, and Mr Emmert then said he believed he would accept the proposition. Mr Pruitt, was particular, however, to say that the contract had to provide that he should be protected against the Slempp contract, and that he would not sign the contract without that provision in it. These negotiations resulted in the contract of December 20th, 1902.

I saw nothing whatever in his conduct that day to suggest to me that he was even feeble minded for a man of his age. Upon the contrary I thought he displayed full understanding of the matters between Mr Emmert and himself, and exercised the prudence that any ordinary business man would have done in a matter of that kind. He talked to me that day about numerous subjects telling me of a good many things that had happened when he had worked for my father, having a better memory about some of them than I had. He discussed with us that day the boundaries of his lands, the nature and character of the timber on them, the acreage called for in the several deeds under which he claimed, discussing particularly a Commissioner's deed and a question of cost in connection with the same, and appeared in every way to be conversant with his property, and to understand the nature and importance of his business. I have no recollection of having seen Mr Pruitt after the date of the execution of the contract.

This 23rd day of May, 1907.

E. W. Pennington

Subscribed and sworn to before me, H. C. T. Ewing,
Clerk of the Circuit Court for Lee County, Virginia, by
E. W. Pennington, this the 23rd day of May, 1907.

H. C. T. Ewing
Clerk of the Circuit Court of
Lee County, Virginia.

Filed May 24, 1907.

H. C. Ewing,
Clerk

STATE OF VIRGINIA, County of Lee, to-wit:

I, H. C. T. Ewing, Clerk of the Circuit Court for the County and state aforesaid, do hereby certify that W. T. Orr, this day personally appeared before me in my county aforesaid, and made oath as follows, to)wit: I am the same W. T. Orr whose name is signed to the certificate of acknowledgment to the contract of December 20th, 1902, between Elijah Pruitt, W. B. Emmert, John H. Caldwell and B. L. Dulaney, for the sale of the coal and mining rights on the Pruitt land. I had seen Mr Pruitt several times before that, - three or four times, - and there was nothing in his manner or language or conduct that day which led me to suspect that he was of unsound mind or incapable of understanding his business, but I thought that he was a man of average intelligence for his age, and considering his opportunities and what he had been theretofore. I never considered him a particularly smart man. I got acquainted with him about twenty five or twenty six years ago, and it didn't seem to me that he had failed any more than any other common man that I had known in that time. If I had not thought he was capable of understanding what he was doing I would not have been willing to certify his acknowledgment. Given under my hand, this May 23rd, 1907.

H. C. T. Ewing Clerk
Circuit Court Lee Co., Virginia.

Filed May 24, 1907.
H. C. Ewing,
clerk.

LEE CIRCUIT COURT.

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston, et al.,

AFFIDAVIT OF L. T. HYATT

Affiant, L. T. Hyatt, states, on oath, as follows:
I was associated with Judge C. T. Duncan as counsel for Elijah Pruitt in the specific execution suit referred to in the answer in this cause, and was with Judge Duncan at the time of the execution of the deed referred to in the bill. I took his acknowledgment to the deed, believing then and believing now that he was entirely competent to make, execute and acknowledge the same, otherwise I would not have certified the acknowledgment. No representative of W. B. Emmert and his associates was present. I suppose we were at his house that day as much as two hours. We got there before dinner, were there until dinner was prepared, got dinner and staid until some time after dinner. There was nothing at all in his conversation or conduct to indicate any lack of mental capacity. I recall a conversation which took place there and will here repeat it, in connection with his acknowledgment of the deed, namely: When Elijah Pruitt had

signed the deed by mark, I asked him if he acknowledged the deed, and he replied that he did. His daughter, Mrs Alba Johnston (wife of 'Squire Johnston) who was present, then spoke up and said: "Pap, do you want to do what you are doing" He replied, "No, I don't" I then said "Then I can't certify the acknowledgment" Mr Pruitt then went on and said "You misunderstand what I mean. I mean that I had rather I had never made any contract in regard to the land, and had rather keep the land, but since entering into these contracts, I can see there is no way for me to get out of selling, and I think now, the best thing for me to do is to let it go at the sixteen dollars per acre". I then said "Then you do acknowledge the deed", and he replied "Yes, I do", and I signed the certificate. Judge Duncan paid to Mr Pruitt the cash amount recited in the deed aforesaid, and then Mr Pruitt said to him "Charley, I don't want to keep this money here, but I want you to take it to Jonesville and put it in the bank in your name and keep it for me", or words to that effect. Thereupon, Judge Duncan agreed to do this, but said he wanted to give Mr Pruitt a receipt for the money, which he did. Mr Pruitt that day talked about matters and things in general, discussing his desire to Register and vote under the new Constitution, his previous acquaintance with Judge Duncan and the pranks he had played when Judge was a boy, about his work on his place,

and the amount of work he was able to do, and also about his War record, displaying intelligence and memory about all of these matters, equal to that of any other man of average intelligence at his age.

This the 22^d day of May, 1907.

L. T. Hyatt

Subscribed and sworn to before me, H. C. T. Ewing,
Clerk of the Circuit Court for Lee County, Virginia,
by L. T. Hyatt, on this the 23^d day of May, 1907.

H. C. T. Ewing
Clerk of the Circuit Court for
Lee County, Virginia.

Filed May 24, 1907.

A. C. Ewing,
Clerk.

LEE CIRCUIT COURT.

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston et al.

AFFIDAVIT OF J. C. NOEL.

Affiant, J. C. Noel, states on oath as follows:

I was at Elijah Pruitt's house on the 20th of December, 1902, the date on which he executed the contract to Emmert Dulaney and Caldwell. I spent several hours at his house that day and got dinner there. There was nothing in his manner or talk or conduct that day that led me to suspect that he was not mentally capable of transacting business or entering into the contract. Mr Pruitt talked about a variety of subjects, displaying intelligence and an average amount of general information on local matters. I do not recall the various matters that he talked about, but I do remember that Judge Pennington had a horse there that day that was sick and Mr Pruitt gave his horse attention, and administered some remedy thatbapparently had the desired effect. Subsequent to this time, Mr Pruitt sent for me to represent him and to try to induce Mr Emmert and

his associates to pay him sixteen dollars per acre for his land in fee, and I worked on this proposition until I had arranged for them to pay him four thousand dollars for his land. As the land actually ran out on survey, - this sum was more than sixteen dollars per acre. And, when I went back to his house to close this trade with him two of his sons, Hugh and Nath Pruitt, were mad about it, and were unwilling for the trade to be made, and acted so disagreeable with me about the matter that I left and abandoned the trade. I learned afterwards that Mr Pruitt had employed Judge Duncan.

I saw Mr Pruitt on as many as three occasions after he had executed the contract of December 20th, 1902, and at no time did he impress me as being otherwise than capable of attending to his own business.

This 24 day of May, 1907.

J. C. Noel

STATE OF VIRGINIA, County of Lee, to-wit:

Subscribed and sworn to before me, H. C. T. Ewing, Clerk of the Circuit Court for Lee County, Virginia, on this the 24th day of May, 1907, by J. C. Noel.

H. C. T. Ewing,
Clerk of the Circuit Court of
Lee County, Virginia.

Filed May 24, 1907.

J. P. C. Ewing,
Clerk.

Alba Johnston
vs
Black Mountain Coal Land Co Ltd

Affidavit of Alba Johnston

va. Lee county, to wit:

This day Alba Johnston made oath before me H. C. Jackson a Justice of said county That she was present when the deed in controversy was executed in October 1900. I said Mr Duncan I want to ask Pap a few questions, he said "all right Alba ask as many as you want to." I said "Pap are you signing away your rights willingly?" Pap said "No I am not. They have signored me, and scared me, and forced me to do what I am doing." Mr Duncan said "Sige we cant take such a deed as that" Pap said "Charley you will take that or none" Mr Duncan then said "Alba I have got a paper here I want you and the chil-

deed to sign, for my special
satisfaction hereafter. I said no
I would not sign any paper if anybody put my name on it.
My father never said to me
Hyatt "You misunderstand what
I mean, I mean that I had rather
I had never made any contract
in regard to my land and had
rather keep the land but since en-
tering into these contracts, I see
there is no way for me to get
out of selling and I think now,
the best thing for me to do is to
let it go at the sixteen dollars
per acre"

Father's mind was at that time
in such condition that he was
not at all capable of making a
deed.

Given

~~for~~ ~~the~~ ~~deed~~ ~~to~~ ~~him~~

~~The above affidavit was~~
~~this day, sworn to and sub-~~
~~scribed before me this 23rd~~
~~day of May 1907.~~

Given under my hand this
23rd day of May 1907.

H. C. Jordan J. P.

Filed May 24, 1907
H.C.G. Ewing,
Clerk -

LEE CIRCUIT COURT.

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston et al.

AFFIDAVIT OF J. C. NOEL.

Affiant, J. C. Noel, states on oath as follows:

I was at Elijah Pruitt's house on the 20th of December, 1902, the date on which he executed the contract to Emmert Dulaney and Caldwell. I spent several hours at his house that day and got dinner there. There was nothing in his manner or talk or conduct that day that led me to suspect that he was not mentally capable of transacting business or entering into the contract. Mr Pruitt talked about a variety of subjects, displaying intelligence and an average amount of general information on local matters. I do not recall the various matters that he talked about, but I do remember that Judge Pennington had a horse there that day that was sick and Mr Pruitt gave his horse attention, and administered some remedy that apparently had the desired effect. Subsequent to this time, Mr Pruitt sent for me to represent him and to try to induce Mr Emmert and

his associates to pay him sixteen dollars per acre for his land in fee, and I worked on this proposition until I had arranged for them to pay him four thousand dollars for his land. As the land actually ran out on survey, this sum was more than sixteen dollars per acre. And, when I went back to his house to close this trade with him two of his sons, Hugh and Nath Pruitt, were mad about it, and were unwilling for the trade to be made, and acted so disagreeable with me about the matter that I left and abandoned the trade. I learned afterwards that Mr Pruitt had employed Judge Duncan.

I saw Mr Pruitt on as many as three occasions after he had executed the contract of December 20th, 1902, and at no time did he impress me as being otherwise than capable of attending to his own business.

This _____ day of May, 1907.

STATE OF VIRGINIA, County of Lee, to-wit:

Subscribed and sworn to before me, H. C. T. Fwing, Clerk of the Circuit Court for Lee County, Virginia, on this the _____ day of May, 1907, by J. C. Noel.

Clerk of the Circuit Court of
Lee County, Virginia.

Alba Johnston et al
vs
Black Mountain Coal Land Co.,
Incorporated

Affidavit of S M Johnston
counter to J C Voell's Affidavit

Affiant S. M. Johnston states
that shortly after the declaration
in ejectment of the above named
Incorporation was served upon
the heirs of Elijah Pruitt, himself
and being the husband of Abby
Johnston. And Mr H Johnston
husband of complainant Mary
Johnston. and also Nathan
Pruitt, and Robert Pruitt, employ-
ed John C. Voell, attorney at Law,
at S M Johnstons house in the
"Pocket" about the last days of
November 1906, to defend said
action of ejectment, and secure
the ^{deed} in controversy, made in Octo-
ber 1903, set aside we were to pay
Mr Voell \$1000 each if he was
successfull, and nothing if he
was not successfull.
Mr Voell based his hope of
success not only upon inform-

ation given him by us, but upon his own knowledge of the condition of Mr Pruitts mind.

Mr Noell said he was bound to swear that Elijah Pruitt had no mind. He said he went to Mr Pruitts one day and found 4 of his children hold him to keep him from killing himself, he said what he (meaning Mr Pruitt) has done is not worth a "shuck".

Affiant states that just prior to last December Court for Lee County 1906. he received a letter from J. C. Noell stating it would be impossible for him to attend to the suit, expecting to have to attend the Legislature.

Affiant also states that he was present when the deed was made in October 1903. That his wife Alba Johnston said Mr Duncan wants to ask Pap a question. Mr Duncan said "all right Alba". And Alba said Pap are you a signing this?

deed willingly," and Mr Pruitt
said "No Alba I am not ^{they}
have signed me, forced me
and drove me to what I am do-
ing." Then Mr Duncan said "Sign
we cant take such a deed as that,"
and Mr Pruitt said, "Charley
you will take that or none
for it is all I can make you"
Mr Hyatt then said "Judge
such a deed as that is not
worth a d - n."

Mr Duncan then said to my wife
"Alba I have a paper here that I
want you to sign". I asked him
to read it and he commenced
to read it and what he read, was
just like a deed, And Alba said
"Mr Duncan I have signed no
papers and dont intend to sign
any, and if you put my name
to a paper I will put the law
to you."

Mr. Pruitt did not say "you mis-
understand what I mean, I mean
that I had rather I had never
made any contract in regard to

the land, and had rather keep
the land but since entering in-
to these contracts I can see ~~no~~
there is no way for me to get out
of selling, and I think now, the
best thing for me to do is to let
it go at the sixteen dollars per
acre."

Mr. Peritt was not at that time
mentally capable of making a
deed.

S. M. ^{Miss} Johnston
This 23 May 1907 ^{made}

Va Ler Co, to wit:

Then above affidavit was
this day subscribed and sworn
to before me H. C. Jorlyn Justice
of the County aforesaid in my
County Given under my hand
this 23rd May 1907

H. C. Jorlyn J. C.

Filed May 24, 1907-

H. C. Jorlyn,

clerk

Lee County, to-wit

I H. C. Joslyn, a Justice
of the peace for said County do
certify that James M. Carter
appeared before me this day in
my said County and made oath
that he has known Elijah Pratt
for about 15 years and frequently
had occasion to observe the man-
ner and condition of said Pratt, that
at times said Pratt appeared to
be reticent but if approached on
questions or matters of business he be-
came very much excited and disturbed
and at such times was manifestly un-
balanced and not competent to trans-
act business - Given under my
hand this May 22, 1907.

H. C. Joslyn J. P.

af-1

Filed May 24, 1907-

H. S. Ewing,
clerk-

Lucy, to wit -

I H. C. Joslyn a justice
of the peace for said County do
certify, that J. C. DeBott made
oath before me this day that on
one occasion about one or two years be-
fore the dead came charged he met up
with the said Elyse Smith and
had a conversation with him and
at first the said Smith seemed
to talk seriously, but his attention
was directed to something else when
the said Smith's mind to seemed to
go to pieces; that he talked and
acted like an insane man and that
he does not consider said Smith on
that occasion competent to transact
business of any kind. Given under
my hand this May 22, 1907

H. C. Joslyn J. P.

af 2

Filed May 24, 1907

A. C. Ewing -
Clerk -

I R. C. Joslyn, a Justice for the
County of Howard do Certify That E. L.
Mones made oath before me this
day in due form of law that he was
well acquainted with Elzoh Smith in
his life time, that affidavit sworn on file
was before the death of said Smith
asent to his house and purchased a hog
from on the premises and even to get the
said hog on the following day he went
to the hog and with said Smith
his business and the said Smith will
affirm he had never sold him a
hog and he had never seen witness be-
fore on a robbery or other witness to leave
his premises - Affidavit is well acquainted
with the material conditions of the
said Smith and truly believe that
he ^{was} not complicit to trans-
action or make a deal in the year
1903 - Affidavit further states that he
is of opinion that the land in question
in the year 1903 was worth \$100.⁰⁰
per acre -

Given under my hand this 22nd day of May
H. C. Joslyn - J.

ap- 3

Filed May 24, 1907-

H. C. Ewing,
clerk-

Lee County, Texas:

I H. C. Jashyn a Justice for
said County do certify that J. L.
Gaddell made oath before me
that he in my County that he was
well acquainted with Elijah Smith
in his life time and had frequent
occasions to note the Mental Condition
of the said Smith and affirm
from his General Knowledge of the
said Smith is of opinion that
he came out in 1863 Mentally Ca-
pacitated to execute a deed on the
transfer of any kind of business.

Given under my hand this
May 22, 1907

H. C. Jashyn J. J.

af-4

Filed May 24, 1907

H. C. J. Ewing,
Attor.

Lee County, Co. Wash. -

I, N. C. Jorgensen a Justice for
said County do hereby certify that Mary
Johnson well and before me
this day in my County state she is
the daughter of Elijah Smith, deceased,
that said affiant lived about six miles
from her father in 1903, that said
affiant has been and is now to observe that
the wife of said Smith transacted his
business; that the murder day of the
said Smith has been very worked since
about 15 years, affiant further states
that said Smith about the time
of the execution of the deed in question
was in such a bad state of mind that
he repeatedly threatened to take his own
life and it became necessary to
have him watched and guarded to
prevent him doing violence to himself;
affiant further states that the murder
execution of the said Smith in 1903
was not such that he could transact
any kind of business - Given under
my hand this May 22^d 1907,
H. C. Jorgensen J. P.

Op- 6-

Filed May 24, 1907
A. S. Ewing,
clerk -

Pa. Lee County, Tenn.

I, H. C. Joslyn, a Justice of the
peace for said County do hereby
testify that B. W. Bossett appeared before
me and made oath that by that
he is well acquainted with Eliza
Smith in his life time, that the
said Bossett in the year 1903 was
a Justice of the peace for said
County and in that year was called
to the home of the said Smith
for the purpose of taking the ~~deposition~~
of said Smith to a certain
touching this same land with the
same under and that quite a
little conversation was raised over the
matter and officers decided that
the mental condition of the said
Smith was not sufficient to transact
the business in question and officers
went away without taking the ~~deposition~~
desired. Officers for the State that
from his general knowledge of the
mental condition of said Smith, he
was not competent in 1903 to ex-
ecute a d.e. Given under my hand

This May 22, 1907

H. C. Joslyn J. P.

af-6

Filed May 24, 1907-
H. C. Ewing,
clerk -

Virginia, Lee Co - To wit:

D. H. & Joslyn a justice
in and for the County afore-
said, do certify that Oscar
S. Doss made oath before me
this day, in my County afore-
said that he has lived about
4 or 5 miles from Elijah Pruitt
for the last 24 years of his life
was well acquainted with him.
The last years of his life I ^{have} past
him every day or every other day
was carrying the mail.

Mr Pruitt said they had scared
him - made him make a scared
deed and robbed him of his
land. for the last 4 years of his
life his mind was bad. considered
him incapable of making any
kind of a trade. That he would have
held Elijah Pruitt's land for \$1000
per acre in the year 1903.

Given under my hand this
22 day of May 1907.

H. C. Joslyn J. C.

of- 7

Filed May 24, 1907
H.C.D. Ewing,
Clerk-

Lee County, to wit:—

I H. C. Joslyn a Justice of the Peace for the County aforesaid do certify that Wm. H. Woff made oath before me this day that he was well acquainted with Elzoh Smith in his life time; that Applicant had occasion frequently to see said Smith and converse with him and that he observed the mental condition of said Smith and frequently remarked on same; that he fully & honestly believes the said Smith was not mentally competent to transact business in the Nov 1103; Applicant further states that said Smith was easily influenced and persuaded; Applicant further states that he is of opinion that the land in question on 1103 was worth one hundred dollars per acre.

Given under my hand this

May 22, 1907

H. C. Joslyn J. P.

of 8

Filed May 24, 1907,

A. C. Ewing,

clerk -

No - San Joaquin County -

I. N. C. Justman Justice of
the peace for San Joaquin County to do
Certify that M. M. Guen made out
in due form of law before me, that
he has known Elijah ^{Smith} for twenty
to twenty five years, that he has ob-
served the manner and conduct of said
Smith and that he was present in
month and day both in the year
the land transaction in question was
made, that affiant being advised from
his general knowledge of the said Smith
that he was not competent in the
year 1903 - to transact business or to make
a deed - Affiant further states that
he truly believes the land in question
in 1903 was worth from one hundred
to one hundred and fifty dollars
per acre -

Given under my hand this day
22, 1907

H. C. Joslyn J. P.

of 9-

Filed May 24, 1907

H.C.D. Ewing,

clerk.

Scott County, Ia. cert.
I H. C. Jorlyn Justice for the
County
do certify that A. J. Will
made oath before this day that he ~~was~~^{was}
well acquainted with Elyah Pruitt in
his lifetime, that he even a wishson
to see Pruitt and ~~had~~ had good
opportunity to observe the manner and condition
of said Pruitt and affirm stated that
for a number of years prior to his death
he the said Pruitt did not transact
business as a clerk or officer, seeing that
the said Pruitt in the year 1903
was not mentally competent to
transact business and appearing to expect
a death. Officers remarked when he
heard of the transaction that the said
Pruitt could not make a deal.

Given under my hand this
the 22 day of May 1907—
H. C. Jorlyn L. J.

af 10

af-10

Filed May 24, 1907
H.C.D. Ewing,
clerk-

Lee County, Tex. wit:
J. H. C. Joslyn a Justice
of the Peace for the County afore-
said do certify that J. M. Nelson
appeared before me this day in my County
aforesaid and made oath before me that
affiant is a physician practicing in said
County, that he is well acquainted with
Elijah Pruitt and has known said
Pruitt for about 26 to thirty years
that affiant had been the family phy-
sician of said Elijah Pruitt for
about ²⁶ ~~thirty~~ years and that affiant very
believe the said Pruitt was not actu-
ally hit by the bullet and in the year
1883-

Given under my hand this May
22, 1887-
H. C. Joslyn J. P.

of 11

Filed May 24, 1907
H. C. Ewing,
Clerk-

I H. C. Joslyn a Justice for
Lincoln Co. N. H.

do certify that J. L. Pratt
made oath before me this day that
he is a practicing physician in said
County; that Applicant had known Elijah
Pratt for about twenty five years, that
Applicant was a witness to said Pratt;
Applicant further stated that he has
observed the mental decay of the said
Pratt decay for about fifteen years
prior to his death that the mental
condition of said Pratt grew worse up
to the time of his; that said Pratt
was every respected by others as was
fitful a child like in his mind;
That in the year 1883 the said
Pratt was not mentally competent to
execute a deed or transfer any other
kind of business that require thought or
careful action. Applicant further states that
he knows the land in question, that
there is cash paid ^{to} ^{cash} in worth in
1883 One hundred Dollars per acre at
least. Given under my hand this
May 22, 1907. H. C. Joslyn J.P.
L. P.

of 12

Filed May 24, 1907

H.C.G. Ewing,
clerk-

Va See County, to-wit:

I, H. C. Joslyn a justice of the County aforesaid do certify that Mr. H. Johnston made oath before me in my county aforesaid, that he is a son-in-law of the late Elijah Pruitt. Affiant lived most of the time live within a mile and a half of Mr Pruitt, and had a good opportunity to watch the condition and changes of his mind.

Affiant first discovered that Mr Pruitt's mind was failing about 20 years ago. He got gradually worse all the time till his death on the 20th of last August.

Affiant states that Elijah Pruitt's mind was not in such a condition during the year 1908, as to enable him to make a valid contract execute a deed or transact any business. He was a mental wreck. Given under my hand this 22 day of May 1909. H. C. Joslyn J. C.

of 12

Filed May 24, 1907

H. C. Ewing
Clerk

Lee County, Va. - vis.

J. H. C. Jorlyn a justice
for the County aforesaid do
certify that E. S. Stapleton
made oath before me this
day that he had known Eliza
Smith for about twenty to twenty
five years before his death; that
affiant noticed it or knew him
prior to his death the mental
decline of said Smith; that af-
fiant is deputy sheriff for said
County, at one time affiant told
the said Smith about his living
on some slices of lumber in which
said Smith had no interest, at he
became very violently talked and acted
like an insane man; that the
mental condition of said Smith
got worse up to the time of his
death; Affiant further states
that from his personal knowledge
of said Smith he did not consider
him mentally competent to execute an
oath in the year 1803 -

Given under my hand this 24/07
J. H. C. Jorlyn J. P.

AL- 14

Filed May 24, 1907

H. C. J. Ewing,
Clerk -

Virginia, Lee County, to-wit:

I, H. C. Jaelyn, a justice of the county aforesaid do certify that S. W. Johnston, this day made oath before me in my county aforesaid that he is a son-in-law of Elijah Pruitt, deceased. Affiant has been acquainted with Mr Pruitt for the last 27 years of his life. Affiant had a good opportunity to watch the condition Mr Pruitt's mind.

About 20 years ago Affiant first noticed a material change in Mr Pruitt's mind. He at that time got mad at his son Robert for apparently ^{and threw an axe at Robert} nothing, and stone ~~the~~ ^{an} axe to the eye in a bushy stump. Shortly after this his wife died and he continually lost his mind and physical strength to the end of his life. For the last 16 or 17 years of his life he was a mental wreck; not capable of making a trade executing a deed or transacting any business.

Affiant was present in 1903 when the deed in controversy was executed. My wife asked him if he he was signing his right away willingly

and he said no child, they have
siquored me, threatened me with
Gamm Slemph, scared me and
drove me into this, he cried ^{when}
he made the statement.

When he would see them com-
ing to trade with him he would
frequently go off and hide and
cry. And when they would come
in he would frequently say to
them "have I killed or robbed any
body, that you are here after
me and terrifying my life out
of me?" And said to them he
wished they would go off and
let me alone, and quit terrifying.

~~Given under my hand this~~
~~22 day of May 1907. After the deed~~
~~was signed Mr. Duncane drew~~
~~out a paper and said~~

Given under my hand this
22 May 1907.
H. C. Forslyn J. P.

No 16-

Filed May 24, 1907.

H. C. Forslyn,
J. P.

Lee County, To-wit:

I, H. C. Jasper a justice of
the peace for the County aforesaid
do certify & certify that Abner
Johansen made oath before me this
day in my said County that she
is a daughter of Elijah Pruitt, de-
ceased, that she was present when
the deed in question was done
that witness asked her father if
he was signing his rights away
and he replied, no child, they have
bribeed me, threatened me, ^{with the law,} and forced
me into it; While the parties were
visiting my father to get this deed, he
could frequently go off and hide,
could weep frequently and often say
he believed he could be robbed or
murdered; I have frequently heard
him threaten to kill himself and
he often had to be coaxed to
keep him from doing harm to
himself. His mind had rapidly
declined since the death of his
wife about 16 years before his
death; for years before the death
of his wife she transacted the business

I am under my head this morn 22/07
H. C. Jorlyn L. P.

16

Filed May 24, 1907
H. C. Ewing,
Clerk -

Olva Johnston et al
vs
Black Mountain Coal Land Co Ltd
Affidavit of W. H. Johnston.

Affiant Walter H Johnston states that immediately after the declaration in ejectment involved in this suit was served, he together with S. M. Johnston and other defendants in ejectment suit, retained J. C. Nall to defend them in said suit, and have the deed under which the Black Mountain Coal Land Co claimed title to the land in controversy set aside. We were to pay Mr Nall \$100⁰⁰ each if he was successful. - Nothing if he was not successful.

Mr Nall based his hope of success, on his own knowledge of Mr Pruitt's insanity as well as upon information derived from others.

He said "that old man (meaning Mr Pruitt) ^{is} not ^{right}, and they (meaning Dept Co) know it.

Mr Hall said he went to Mr
Pruitts and saw some mem-
ber of his family guarding
him to keep him from kill-
ing himself. He said Mr
Pruitt was insane and in-
capable of doing business and
it will be no trouble to prove.

Affiant, last december (1906)
saw a letter from J. C. Hall.
to ~~Mr. Johnston~~ ^{Mr. Johnston} stating that it
would be impossible for him
to be at court, and advising
him to get another attor-
ney.

W. H. ^{his} Johnston
mark

Va See co, to wit:

The above affidavit was, this
day subscribed and sworn
to before me H. C. Jostyn a
justice of said in my county
aforesaid. Given under my
hand This May 23^d 1907.
H. C. Jostyn J. P.

Filed May 24, 1907.

H. C. J. Jostyn,

clerk.

CIRCUIT COURT FOR LEE COUNTY.

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston et al.

AFFIDAVIT OF W. B. EMMERT..

Affiant, W. B. Emmert, states, on oath as follows:
I have read the answer of the Black Mountain Coal Land Company, Incorporated, to the bill of complaint in this case; and familiar with most of the facts set forth therein of my own personal knowledge, and with the residue thereof by information, and state that the said facts, so far as within my own knowledge are true, and, so far as dependent upon information derived from others, are by me believed to be true. I was one of the parties to the contract and deed from Elijah Pruitt, mentioned in the said answer.

My first meeting with Mr Pruitt was in April, 1902, when I was looking at that section of country in company with Mr. P. C. Thompson. We went to Mr. Pruitt's house, and found him working in his fields, on his farm, went to him and talked with him about the coal of that section. He invited us to remain

for dinner, which we did, and, in the meantime, discussed the matter of a price on his land. He stated, in effect, that he was not in position to sell the land; that he had given Slomp a contract which was still in effect. I told him that we were thinking of buying some more land in that territory, and offered him twelve dollars and a half per acre for his property. He was inclined to take that price, and went as far as to allow us to begin the drafting of the contract of sale; but decided that the Slomp contract was against him, and that he would not risk making another contract until the Slomp contract had expired.

My next meeting with Mr Pruitt was on his farm in the following November. Mr Pruitt and his son Nathan were chopping wood near the house, and I went to where they were and opened up the subject of buying the farm, and Mr Pruitt told me that the Slomp contract was still in effect, and that he was not in position to sell. I only staid where he was a few minutes, went back by his house accompanied by Nathan Pruitt, and leaving the old gentleman at work. I left my horse hitched immediately in front of Mr. Pruitt's residence, and had taken out of my saddle bags a Kodak, Level, Barometer and Compass and put in my over-coat pockets. When I returned to my horse, accom-

panied by Nathan Pruitt, I took a half pint of whiskey, in a flask, out of my saddle bags in placing the articles just named back in the saddle bags, and offered Nathan Pruitt a drink. He took a very small drink of the whiskey, and I told him to get a glass and take the old man a drink, which he did,-- took a small amount of whiskey from my bottle and carried it into the house. I don't know whether the Old Man Pruitt got this whiskey or not. This was the only time that I ever had whiskey on the Pruitt premises, or ever offered whiskey to one of the Pruitt's, or to any one else in that section of country. This ended my meeting with the Pruitt's at that time.

My next meeting with Mr Pruitt was at his house in December, 1902, in company with C. Slemp, C. B. Slemp and Elias Wax. I was there only a few minutes, but while there the matter of purchasing the land was mentioned by Mr Slemp, but nothing definite was said that I know of. Night was coming on and Mr C. B. Slemp and myself left the Pruitt place and went to Pennington, leaving Colonel C. Slemp at the Pruitt house.

My next meeting was on the 20th of December, 1902, (a few days subsequent to the meeting just mentioned) and was at the time the contract for the sale of the coal right at five dollars per acre was taken. Judge E. W. Pennington and Mr. W. T. Orr were present at the time of this last meeting.

I met him at his home again, subsequent to the last mentioned meeting, but am not sure whether it was before or after the execution of the deed which he made to myself and associates; at any rate, I have met him at his home several times since the 20th of December, 1902,- the date of the last mentioned contract.

At every meeting with him, our business matters were discussed more or less, and at all times I considered him perfectly sane and competent to transact business. In fact, I never heard his sanity questioned until long after the execution of the contract of December 20th, 1902, nor until after the institution of the suit which we brought for the specific execution of that contract. About the time the compromise negotiations began, I did hear it rumored that some of his children were claiming that he was mentally unbalanced; but I had seen so much of him, and knew so much about him, that I was satisfied there was no ground for any such claim, and paid very little attention to it. After the execution of the deed, Mr Pruitt talked to me several times about the money which had been paid to him in part payment for the land, and informed me that he had left it with Judge Duncan in Jonesville and advised with me as to what disposition was best to make of it.

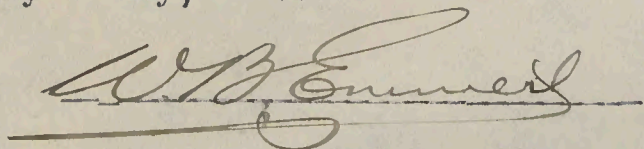
I have attempted to make this statement as brief

as possible. There are a number of other facts and circumstances which I might state in this connection which would, I think, tend further to show that Mr. Pruitt was entirely capable of attending to his own business, but I suppose that what I have already said is sufficient for present purposes. I will add, however, that no coercion or threats were ever resorted to, and that no attempt was ever made by ~~him~~^{me} or by any representative of myself and associates to ~~induce~~^{unduly influence} Mr. Pruitt to sign any paper binding him to part with his land.

The compromise settlement which is referred to in the defendant company's answer in this suit, and which is evidenced by the deed filed therewith was made in the office of Messrs Bullitt & Kelly, in Bristol, Virginia. The negotiations on behalf of Mr Pruitt being conducted by Judge Duncan, who was there to represent him.

Judge Duncan took the deed to him and brought it back executed and acknowledged, and delivered it to us, or perhaps, to our attorney. At any rate, neither of us, and no representative of ours was present, or had anything to do with the procurement of the deed.

This 22nd day of May, 1907.



Subscribed and sworn to before me, H. C. T. Ewing,
Clerk of the Circuit Court of Lee County, Virginia,
by W. B. Emmert, on this the 22 day of May, 1907.

H. C. T. Ewing,
Clerk of the Circuit
- - Court of Lee County

Filed May 24, 1907.

H.C.J. Ewing,
Clerk.

CIRCUIT COURT FOR LEE COUNTY

Black Mountain Coal Land Company, Incorporated,

ads

Alba Johnston, et al.

AFFIDAVIT OF C. T. DUNCAN

Affiant, C. T. Duncan, states on oath as follows:
Shortly after the institution of the suit in chancery by J. H. Caldwell, B. L. Dulaney and W. B. Emmert against Elijah Pruitt for the specific execution of the contract for the sale of the coal and certain timber rights to the said Caldwell, Dulaney and Emmert, I was sent for by Mr Pruitt, to be consulted by him for the defense of that suit. I went to his home and found him there, and he told me that he wanted me to represent him and defend his interests in that suit, which I agreed to do. He then told me that he was in trouble about his land there; that he had executed a contract to Slemp by which he had agreed to sell that land, or that Slemp should sell it for him at the price of sixteen dollars an acre, and that afterwards ^{Cladwell} or Dulaney that represented him, represented to him that that option had been turned over to them, and had de-

manded a deed from him, but they didn't show him the option, and that he was afraid of Slemp; that he understood he was a very hard man, and a considerable rascal, and he had refused to make a deed/^{or contract} with Caldwell and Emmert (he didn't use Delaney's name) on account of that option outstanding, but that he had finally agreed to sell them the coal on his land, with certain timber rights, at the price of five dollars per acre; that he had made that contract because Judge Pennington represented to him that he would get more money with that five dollars per acre and the timber on his land than he would at the price of sixteen dollars an acre in fee, and that he believed that Judge Pennington had overestimated or over-represented the value of his timber, and that they had called on him for the specific execution of that contract, and he had refused to execute it because they had not yet complied with their undertaking to deliver up to him the Slemp option. I said to him that that contract for the sale of the coal was a pretty plain one and very difficult to defend, and asked him if he was willing, in the event that the Slemp option was put out of the way to sell the land in fee at sixteen dollars per acre. He told me he was, and authorized me to see if I could make that kind of a compromise with the people to whom he had contracted his coal as

aforesaid. Shortly after that notice, was given in the case of Caldwell, Dulaney and Emmert against Pruitt to take depositions in the City of Bristol. At Mr Pruitt's request I went up there to be present at the taking of those depositions. While there, I notified the parties that I had, as I thought, authority to settle the whole question involved by a sale of that land to them at the price of sixteen dollars per acre. They then agreed that if Mr Pruitt would sell and convey that land to them at the price of sixteen dollars per acre, and have the same surveyed that they would pay him that price and dismiss their suit. I come back and went to see Mr Pruitt and notified him of what I had done, which seemed to be perfectly agreeable to him, and either at that time or shortly thereafter, Mr L. T. Hyatt and myself again went to see him, taking the deed that had been prepared with us and he executed that deed freely and voluntarily in accordance with its terms, and in accordance with the settlement of the question which I had made for him in Bristol, as above stated, *the deed was made*

I had known Mr Pruitt from my earliest recollection. In fact, so far as my memory now serves me, outside of my father, he is the first man I can now remember. I was then a very small boy, and he was living with his mother and brother and sister within hollowing

distance of my home. I knew him for some years thereafter, when he married and moved out of the neighborhood in which he and I had formerly lived. During the War, Mr. A. J. Pendleton, a brother to my stepmother, and myself purchased a small tract of land on Stock Creek in Scott County, and when I came back home, I found Mr Pruitt living on that farm as a renter. He lived there for several years. In fact, up to the time ~~until~~ we sold this tract of land. During that time I regarded him as perfectly competent to attend to and transact any business, and on the day I first went to see Mr

Pruitt, as above stated, on the day and at the time this deed was executed, I regarded Mr Pruitt as being perfectly competent to attend to and transact any business that he had to transact as he ever was in his life. I regarded him as perfectly sane and in every way competent to transact this business, and had I not so regarded him, I would not have allowed him to execute this deed. After the deed was executed and delivered he directed me to receive the first installment of the purchase price on the land and to take it to Jonesville and deposit it in the bank in my own name as his agent and attorney, which I did. He used as a reason for the money being taken to Jonesville and deposited in the bank, saying that he wanted to get it as far away from him as was proper, that his children annoyed him a good deal

about money. After the deed was signed and delivered and he had given me this instruction about his money, he stated to me that one hundred dollars had been paid to him when the contract in regard to the coal had been executed, and that that money had been placed in the hands of his son-in-law, William Eldridge, for safe keeping or holding, or words to that amount. He authorized me to go to Mr Eldridge and collect that money on my fee for representing him. I said to him, Mr Pruitt, I don't know that that would be right, this money may be claimed by Caldwell, Dulaney & Emmert. He replied: "Oh, No, they can't claim that money, you have already beaten them when they agreed to dismiss their case, and that money is mine, and I want you to go and collect it."

At the time this settlement was made, there was no representative or agent of Caldwell, Dulaney and Emmert there, so far as I can remember. There was present at that time some of his children, but I can't remember just which ones, except the widow, Martha Johnston.

As to the charge in the bill that Mr Pruitt was influenced by intoxicating liquors, or anything of that kind, there is not one single word of truth in it. So far as I know there was not one drop of liquor on his premises, or in miles. I staid there quite awhile

and ate dinner.

This the 22 day of May, 1907.

C. T. Duncan

Subscribed and sworn to before me, H. C. T. Ewing,
Clerk of the Circuit Court for Lee County, Virginia,
by C. T. Duncan, on this the 22 day of May, 1907.

H. C. T. Ewing

Clerk of the Circuit Court
for Lee County, Va.

Filed May 24, 1907

H.C.P. Ewing,

clerk.

MEMORANDUM.

BLACK MOUNTAIN COAL LAND COMPANY, INCORPORATED, A Virginia Corporation,
VS.

GEORGE W. GISH and ROBERT ASBERRY, Defendants.

Issue Spa. in Chancery, with the injunction of the Judge
of the Circuit Court of Lee County, dated the 28th day of September,
endorsed thereon,
1906, returnable to 1st November, Rules, 1906.

Pennington Bros. P.O.

Handwritten notes in left margin:
George W. Gish
Robert Asberry
Pennington Bros.
P.O.

Black Mt., Ky. Leo

ms. } Memo on our lives

Mrs. H. Geithal

THE UNIVERSITY OF CHICAGO

五

Know all Men by these Presents, That we Black Mountain Coal
Land Company and Robt. L. Pennington,
are held and firmly bound unto the Commonwealth of Virginia, in the sum of (500.00)
Five hundred Dollars,
to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves
and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly
by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and
also of any claim or right to discharge any liability to the Commonwealth arising under this bond, or by
virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our
seals, and dated this 11th day of October, one thousand nine
hundred six,

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound
Black Mountain Coal Land Company

on its bill in chancery against George W. Gish and Rob-
ert Asbury,

addressed to the Judge of the Circuit Court of the County of Lee, Va
has obtained from the said Judge an injunction to enjoin and restrain George W. Gish & Robert As-
bury and all other persons from cutting and removing any timber, ~~and~~ from
the premises mentioned in Exhibit A of said Complaints, all or partly
removing any timber from said premises, which they or either of them have
already cut thereon, or any other timber standing on said premises,

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding
the said injunction, that the plaintiff shall not have the benefits thereof until it
or some one for it, shall enter into a bond, with good security, in the clerk's office of the
said court, payable to the Commonwealth of Virginia, in the penalty of Five hundred
_____ dollars, and conditioned to pay all such costs as may be awarded against the
said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now,
therefore, if the said Black Mountain Coal Land Company shall pay all such costs as
may be awarded against it, and all such damages as shall be incurred in case the said injunc-
tion be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

Black Mountain Coal Land Co.
By R. L. Pennington Secy

Robt L Pennington



In the Clerk's Office of the _____ Court of the _____ of _____
This day personally appeared before me _____, Clerk
of the _____ Court of the _____ of _____
_____, and made oath
that _____ estate, after the payment of all _____ just debts, and those for which he _____ bound
as security for others and expect to have to pay _____ worth the sum of _____
_____ dollars, over and above all exemptions allowed by law.

Given under my hand, this _____ day of _____, 19 _____

Clerk.

Black Mountain Coal
Land Company -

to {

INJUNCTION

BOND.

\$500⁰⁰

Commonwealth.

Filed Oct. 11, 1906.

N. P. J. Evans

Atty.

To Geo.W.Gish and Robert Asbery:

Take Notice that on the 17th day of May, 1907, at the office of E.W. Pennington in the town of Pennington Gap, in Lee County, Va., between the hours of 8 A.M. and 5 P.M. of that day, the undersigned shall proceed to take the depositions of W.B. Emmert and others to be read as ^{our} evidence in ~~xx~~ behalf, in a certain suit in equity depending in the Circuit Court for Lee County, wherein you are defendants and we are plaintiffs; and if from any cause, the taking of the said depositions be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from day to day, and from time to time at the same place, or to other places, and between the same hours, until the same shall be completed.

Yours Very truly,

Black Mountain Coal Land Company

By Pennington B. B.

To Geo.W.Gish and Robert Asbery:

Take Notice that on the 17th day of May, 1907, at the office of E.W. Pennington in the town of Pennington Gap, in Lee County, Va., between the hours of 8 A.M. and 5 P.M. of that day, the undersigned shall proceed to take the depositions of W.B. Emmert and others to be read as ^{our} evidence in ~~xx~~ behalf, in a certain suit in equity depending in the Circuit Court for Lee County, wherein you are defendants and we are plaintiffs; and if from any cause, the taking of the said depositions be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from day to day, and from time to time, at the same place, or to other places, and between the same hours, until the same shall be completed.

Yours Very truly,

Black Mountain Coal Land Company

By Pennington Bros P.C.

To Geo.W.Gish and Robert Asbery:

Take Notice that on the 17th day of May, 1907, at the office of E.W.Pennington in the town of Pennington Gap, in Lee County, Va., between the hours of 8 A.M. and 5 P.M. of that day, the undersigned shall proceed to take the depositions of W.B. Emmert and others to be read as ^{our} evidence in ~~ex~~ behalf, in a certain suit in equity depending in the Circuit Court for Lee County, wherein you are defendants and we are plaintiffs; and if from any cause, the taking of the said depositions be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from day to day, and from time to time, at the same place, or to other places, and between the same hours, until the same shall be completed.

Yours Very truly,

Black Mountain Coal Land Company

By E. W. Pennington P.Q

Black Mt Coal Singles

re { notice to
take up.

Geo. H. Fishel

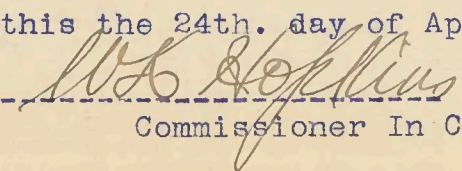
I accept service of
this notice May 13
1907.
L. J. Hyatt atty

VIRGINIA:

Lee County to-wit:

To J.T.Hughes, Deputy Sheriff of Lee County: You are hereby commanded to summons W.E.Thompson~~and~~ C.C.Douglas~~to~~ appear at the Law office of L.T.Hyatt, in Jonesville, Virginia, on the 25th day of April, ~~2007~~ 1907 at 9 a.m. to give evidence in a certain suit in Chancey, wherein the Black Mountain Coal Land Company is Plaintiff and G.W.Gish and others are Defendants.

Given Under my hand on this the 24th. day of April, 1907.



Commissioner In Chancery.

Black Mountain Coal
Lum Company.

vs.

Geo. Lesh et al.

Executed on the
22nd day of April,
1907, by summoning
the within named

Witnesses of J. Hughes & Co.
for Geo. M. Ball
R. L. C.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

Asberry

George W. Gish and Robert

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court,
on the *1st* Monday in *November*, 190*6*, to answer a bill in chancery exhibited against

them by The Black Mountain Coal Land Com-
pany, Incorporated, a Virginia Corporation.

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *12th*
day of *October*, 190*6*, and *13th* year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing,

, Clerk

_____, Clerk.

To enjoin and restrain ^{and all other persons} the defendants, from cutting and removing from the premises mentioned in Exhibit "A" of said Complainant's bill, any timber situated, standing or being on the lands in said Exhibit mentioned, and said Gish and Asberry and all other persons are also enjoined and restrained from removing from said lands any of the timber or logs which they or either of them have already cut from said lands. The bond, required by injunction order, has been executed.

Teste: J. C. P. Ewing, Clerk.

Executed the within summons and injunction endorsed thereon, on the 20 day of October, 1906, by delivering a true copy of the same to Geo. W. Gish.

W. Gish.

D.S.

For P. M. Ball, S. L. C.

Black Mt. Coal Land Co.

SUBPENA
IN
CHANCERY.

Geo. W. Gish, et al.

Geo. W. Gish, et al.

To: Geo. W. Gish, et al.

Court. Geo. W. Gish, et al.

1906.

Executed on the 19th day of October, 1906, by delivering to Robert Asberry, one of the within named defendants a true copy of the within summons with the order of Injunction endorsed thereon.

D.S.

For P. M. Ball, S. L. C.

Edith Asberry

Black Mt. Coal Sand Co

vs. { Bill

Geo. W. Gish & al
